

# South Dakota Department of Education

## Prototype

Request for Proposal  
and  
Fixed-Price Contract

for

School Food Authorities  
Procuring the Services of a  
Food Service Management Company



**Child and Adult Nutrition Services**

February 2018

## SCHOOL FOOD AUTHORITIES AND FOOD SERVICE MANAGEMENT COMPANIES MUST READ THIS PAGE

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### **How to Use SDDOE's Prototype Request for Proposal and Fixed-Price Contract**

The South Dakota Department of Education (SDDOE) is providing this prototype Request for Proposal (RFP) and Fixed-Price Contract to guide school food authorities (SFA) in the development of an RFP and contract to obtain food service management company (FSMC) assistance for its school food service operation. The SFA may not revise any optional terms-of the RFP and contract without SDDOE prior approval. The RFP, contract, and all attachments and exhibits are considered a complete solicitation packet when properly submitted to the SDDOE.

### **Required Pre-Approval**

The SDDOE intends that this RFP and Fixed-Price Contract serve as a "prototype," inclusive of all terms, provisions, and program requirements applicable to FSMC procurements and contracts. However, the SFA remains responsible for ensuring that its procurement documents and processes comply with all applicable laws, regulations, program instructions, and guidance materials. SFAs are not relieved from the federal requirement to obtain approval from the SDDOE prior to the release of an RFP and Fixed-Price Contract to potential Respondents when using *this* prototype. The SFA must make any required changes before the SDDOE will approve its RFP and Fixed-Price Contract. Additionally, SFAs must submit the results of their proposal process to the SDDOE before executing its contract. More information is available on this requirement as well as the SDDOE Web page at <http://www.doe.sd.gov/cans/nsfp.aspx> under the School Meal Programs Requirements.

### **RFP and Fixed-Price Contract Approval Disclaimer**

The SFA should consult with its own legal counsel during this procurement process through contract execution regarding any proposed procurement method and/or contract language.

## Definitions

The following definitions shall apply within this entire document and its attachments and exhibits.

1. "Accounting Periods" means \_\_\_\_\_ (enter accounting period to use (e.g., first day of the month through the last day of the month)).
2. "Allowable Cost" means costs that are allowable under 2 CFR 200 Subpart E, as applicable.
3. "Applicable Credit" refers to the meaning established in 2 CFR 200.406.
4. "Buy American"—The term 'domestic commodity or product' means an agricultural commodity that is produced in the United States; and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
5. "CANS" means Child & Adult Nutrition Services; the State agency responsible for administration of USDA child nutrition and food distribution programs.
6. "Charge" means any charge for an Allowable Cost that is:
  - i. Incurred by FSMC in providing the goods and services that are identified in SFA's Food Service Budget; and
  - ii. Not provided for in the General and Administrative Expense Fee.
7. "Child Nutrition Program (CNP)" means the USDA Child Nutrition Programs in which SFA participates
8. "Contract" means this RFP and Contract, the attachments and exhibits attached to this RFP and Contract and FSMC's Proposal.
9. "Direct Cost" means any Allowable Cost that is:
  - i. Incurred by FSMC in providing the goods and services that are identified in SFA's Food Service Budget; and
  - ii. Reasonably necessary in order for FSMC to perform the Services hereunder. The term "Direct Cost" does not include any cost allocated to SFA as Charges, the General and Administrative Expense Fee, or any Management Fees.
10. "Effective Date" generally means July 1 through June 30. However, in the first year of a contract, an SFA might require an earlier start date to accommodate a program, such as a Summer Food Service Program.
11. "Fixed-Price" Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis. The offer amount should be based on assumption that no donated USDA Foods will be available for use and includes all expected rebates, discounts and other applicable credits that are retained by the SFA.
12. "FSMC's Proposal" means Food Service Management Company's response to the RFP and Contract.
13. "General and Administrative Expense Fee" means FSMC's fee for those services provided at SFA's Food Service Locations, listed in this contract, and included in the per meal charge.
14. "Meal Equivalent" in a fixed-price per meal contract, the FSMC is paid on the basis of the number of meals served. In order for the FSMC to be paid for non-meal food service, non-program meal sales activity and revenues are converted into a specific number of reimbursable lunches. The conversion of non-meal activity into an equitable number of meals is completed by dividing the total of cash receipts, other than from sales of NSLP (including SSO and ACS) and SBP meals, CACFP, FFVP, and SFSP meals (as defined in No. 25 below), by the current equivalency factor. The equivalency formula for the Meal Equivalent shall remain fixed for the term of the Contract and all renewals. The meal equivalency factor (MEF) is the sum of the Federal and State free reimbursement plus the value of USDA entitlement and bonus USDA Foods
15. "Non-profit School Food Service Account" means the restricted account in which all of the revenue from all food service operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

16. Procurement standards. SFA may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with non-profit school food service account funds adhere to the standards set forth in 2 CFR 200 Part D and 7 CFR 210.21. SFA procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable. No employee, officer or agent of the SFA shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards.
17. "Program(s)" or "Child Nutrition Program (CNP) (s)" means the USDA Child Nutrition Programs in which SFA participates.
18. "Program Funds" means all funds that are required to be deposited into the Non-profit School Food Service Account.
19. "Proposal" means Food Service Management Company's response to the RFP and Contract.
20. "RFP" means SFA's Request for Proposal and Contract, and all of its attachments and exhibits.
21. "SDDOE" means the South Dakota Department of Education.
22. "Services" means the services and responsibilities of FSMC as described in this Contract, including any additional services described in this Contract.
23. "SFA" or "School Food Authority" as defined in 7 CFR § 210.2.
24. "SFA's Food Service Facilities" means areas, improvements, personal property, and facilities made available by SFA to FSMC for the provision of the food services as described herein.
25. "SFA's Food Service Program" means the preparation and service of food to SFA's students, children in child care programs, staff, employees and authorized visitors, including the following programs: *National School Lunch Program (NSLP)*, including afterschool -care snacks and *Seamless Summer Option*; *School Breakfast Program (SBP)*; *Summer Food Service Program (SFSP)*; *Fresh Fruit and Vegetable Program (FFVP)*; *Child & Adult Care Food Program (CACFP)*, including afterschool suppers; and *a la carte* food service.
26. "SFA's Food Service Location(s)" means the schools or other locations where Program meals are served to SFA's schoolchildren.
27. "Summer Food Service Program (SFSP)" means either the Summer Food Service Program or the Seamless Summer Option identified herein, and in which SFA participates.
28. "USDA" means United States Department of Agriculture, Food and Nutrition Service.

## Resources

- This prototype RFP and Fixed-Price Contract includes state and federal regulations, guidance, instructions, and policies that are relevant to this type of contract. These laws, regulations, etc., are available and should be reviewed at the SDDOE Child and Adult Nutrition Services and USDA Web pages at <http://www.doe.sd.gov/cans/nslp.aspx> under School Meal Program Requirements – Food Service Management Contracts  
<https://www.fns.usda.gov/updated-guidance-contracting-food-service-management>  
<https://www.fns.usda.gov/school-meals/child-nutrition-programs>
- *Contracting with FSMCs: Guidance for SFAs*, published by the USDA (May 2016), provides information about this prototype sample RFP and Fixed-Price Contract, which is available at the Child and Adult Nutrition Services Web page at <http://www.doe.sd.gov/cans/nslp.aspx> under School Meal Program Requirements – Food Service Management Contracts  
<https://www.fns.usda.gov/updated-guidance-contracting-food-service-management>

## Notice of Request for Proposals

### Food Service Management Company RFP (*Enter RFP Number*)

Notice is hereby given that the Governing Board of the (*Enter name of SFA*) (hereinafter referred to as **SFA**) is requesting proposals for a food service management company (hereinafter referred to as **Respondent(s)**) to assist with the SFA's food service program. The SFA and any Respondent should use the format of this prototype RFP provided on the following pages.

Respondents should not construe from this legal notice that the SFA intends to enter into a Fixed-Price Contract with any Respondent unless, in the opinion of the SFA, it is in the best interest of the SFA to do so. The SFA reserves the right to negotiate final contractual terms with the successful Respondent.

The Request for Proposal (RFP) documents are available by  
(*Enter SFA's Name*) Web site at (*Enter Web site address*)

To request the RFP documents by e-mail, postal mail, or fax, please contact  
(*Enter SFA contact information*)  
e-mail (*Enter e-mail address*)  
Postal Mail (*Enter mailing address*)  
fax (*Enter fax number*)

The SFA will record and provide answers to any questions or requests for clarifying information about the RFP during the question and answer period.

The SFA will hold a **Mandatory/Voluntary Tour** (*SFA to select TYPE of TOUR*) of the SFA facilities on (*Enter DAY, DATE, and TIME a.m./p.m.*)  
Location: (*Enter address*)

All potential Respondents must/should (*SFA Select Must or Should*) attend in order to submit a proposal.

*(Note: the date of mandatory tour MUST occur after BOTH public notices are released. The mandatory tour is optional for the SFA)*

Respondents must submit written proposals in a sealed package labeled  
"Proposal - Food Service Management Company (*Enter RFP#*)"  
Addressed to the SFA at (*Enter SFA name, address, city, state, zip code*)  
Attn: (*Enter contact person name*)

The SFA will accept all proposals received on or before (*Enter day, date, and time*). The SFA will not accept proposals that are received after the deadline. The SFA will open proposals at (*Enter time and date*).

The SFA reserves the right to reject any or all proposals, and to waive any errors or corrections in a proposal or in the proposal process. The SFA will award the contract based on a review and analysis of the proposals that determines which proposal best meets the needs of the SFA. Following the review and analysis of all responsive proposals, the SFA will make a recommendation to its governing board at its regularly scheduled meeting pursuant to SDCL § 5-18C-2.

*(Enter SFA Name)*  
*(Insert SFA Logo Here, Optional)*

**REQUEST FOR PROPOSAL  
FOOD SERVICE MANAGEMENT COMPANY  
Cover Page**

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CONTACT INFORMATION

*(Enter RFP#)*

by

*(Enter SFA Name)*  
**FOOD SERVICE PROGRAM**

ADDRESS ALL PROPOSALS TO:

*(Enter Name)*  
*(Enter Title)*

*(Enter Address)*

*(Enter Phone Number)*

*(Enter E-mail Address)*

*(Enter Fax Number)*

*(Insert SFA Logo Here, Optional)*

## **Request for Proposal**

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## Introduction / Purpose of Solicitation

*(SFA: alter these statements as appropriate or applicable.)*

The purpose of this Request for Proposal (RFP) is to enter into a Fixed-Price Contract with a food service management company (FSMC) that will provide *(Enter district/agency name)* (hereinafter referred to as the school food authority (SFA)) with food service management assistance for their food service operation. The FSMC will provide services to the SFA as described in the Scope of Work in the prototype Fixed-Price Contract.

The SFA's food service goals are to provide nutritious, high-quality meals to students and participants in the food service program to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food service program. *(Note to SFA: Insert all federal meal programs that will be covered under this Contract with notation that the SFA currently participates in or desires to add. The following are examples. Only include descriptions the SFA wants as part of the contract.)*

- Lunch with choices;
- Upgraded meals;
- Salad bar; ...)

The SFA's general food service goals include, but are not limited to, the following:

- Provide an appealing and nutritionally sound program for students as economically as possible.
- Stimulate both student and adult participation in the program through improved relations with students, staff, and the community by creating awareness of the direct correlation between adequate nutrition for students and their ability to learn.
- Increase participation at all levels of the food service program by improving meal quality, seeking student and parent input, offering menu variations, and improving planning.
- Maintain student and staff morale at a high level.

SFAs shall conduct all procurement transactions in a manner that provides maximum open and free competition consistent with Title 2, *Code of Federal Regulations (2 CFR)*, Part 200.319(a)(1-7). The SFA must share with every Respondent all information necessary for submitting a competitive proposal. The release of this RFP, evaluation of Respondents, and award of a contract will use competitive standards established in all applicable South Dakota state and federal statutes and regulations.

Outlined below are competitive bidding basic standards:

- The purpose of soliciting competitive proposals is to secure public objectives in the most effective manner and avoid the possibilities of graft, fraud, collusion, etc.
- The SFA released this RFP to benefit the SFA and not the Respondents.
- Fulfillment of RFP specifications is based on full and fair competition and acceptance by the SFA of the most responsive and responsible Respondent to the SFA's requirements, as determined by the SFA when evaluating proposals based on the criteria contained in the RFP.
- The RFP must provide a basis for full and fair competition among Respondents to a common standard, free of restrictions that tend to stifle competition.

The above four points are for illustrative purposes only, and do not include all South Dakota state and federal requirements to achieve competitive bidding.

To respond to this RFP, interested FSMCs must present evidence of experience, ability, and financial standing necessary to meet the requirements stated in this RFP. The SFA will measure this evidence by scoring the proposals, using a point system that will rank each proposal from highest to lowest, to determine which proposals they will consider for the award of a contract.

To be competitive in this solicitation, the Respondent must:

- Carefully read the entire RFP, attachments, exhibits, addenda, and SFA responses to questions before submitting a proposal
- Ask appropriate questions or request clarification, if necessary, before the deadline in the RFP
- Submit all required responses by the required deadlines
- Understand any applicable state and federal requirements associated with this RFP and contract
- Follow all instructions and requirements of the RFP thoroughly and appropriately

If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other errors in this RFP, the Respondent shall immediately notify the SFA of the error in writing and request clarification or a modification of the RFP. If the Respondent fails to notify the SFA of the error prior to the date for submission of proposals, and is awarded the contract, the Respondent shall not be entitled to additional compensation or time by reason of the error or its later correction.

The SFA has full responsibility for ensuring that the terms of the contract are fulfilled. SFAs must maintain oversight to ensure that any awarded contract is performed in accordance with the terms, conditions, and specifications of the contract and/or purchase orders. The SDDOE is never a party to any contract between a SFA and a food service management company (FSMC). In addition, the SDDOE and the SDDOE Child and Adult Nutrition Services (CANS) have no involvement with the enforcement of this contract; however, SDDOE may deny payment for all meals received/purchased under an invalid contract.

The SFA alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the SFA of any contractual responsibilities under its contracts. USDA will not substitute its judgment for that of the SFA unless the matter is primarily a Federal concern.

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. (2 CFR 200.319(b))

Pursuant to 2 CFR Part 200.318, the SFA must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. This applies if the SFA has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe.

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

SFA procedures seek to avoid acquisition of unnecessary or duplicative items. Consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made to determine the most economical approach.

SFA will maintain records sufficient to detail the significant history of the procurement to include, but not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

The fixed price for meal programs must include all food, supplies, labor (including bonuses, if any) and expenses as shown below. They may not be charged back to the SFA in any other manner.

- Menu development specific to the operation
- Nutrition education materials and program expense
- Design services specific to the operation
- Education program via assembly programs, school room programs, parent/teacher meetings, and school food advisory committee meetings
- Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
- All accounting
- All payroll costs and documentation
- Administrative dietetic, nutritional, sanitation, and personnel advice
- All costs incurred in hiring and relocating, if necessary, the FSMC management team
- All training costs for FSMC employees
- All miscellaneous costs to operate the program; i.e., consumable marketing materials

(Insert SFA Logo Here, Optional)

**Schedule of Events**  
for  
**RFP #** (Enter RFP Number)

- Board Meeting – RFP Approval and Negotiations Authorized (Enter Day) (Enter Date)
- Release of RFP (Enter Day) (Enter Date)
- First Public Notice (Enter Day) (Enter Date)
- Second Public Notice (Enter Day) (Enter Date)
- **Mandatory Tour\*** (Enter Day) (Enter Date)
- Respondent Question Submission Deadline (Enter Day) (Enter Date)
- SFA Provides Answers (Enter Day) (Enter Date)
- Deadline for Submission of Sealed Proposal (Enter Day) (Enter Date)
- Proposals Opened (Enter Day) (Enter Date)
- Proposals Evaluated and Contract Negotiated (Enter Day) (Enter Date)
- Board Meeting – Proposal Approval (Enter Day) (Enter Date)
- Anticipated Contract Award Date (Enter Day) (Enter Date)

The SFA will make every effort to adhere to the above schedule. However, the SFA reserves the right to amend the schedule, as necessary, and will post a notice of said schedule amendment at (Enter where notice will be posted).

\*(Optional) All interested Respondents must attend the Mandatory Tour. The SFA will reject proposals from Respondents that do not attend. (Attachment A)

(Note to SFA: Although the SDDOE does not require SFAs to conduct a mandatory tour, it is advisable so that bidders respond accurately to the RFP. If the SFA is **not requiring** a mandatory tour, delete all mention of it from this page, item 19 on page 5, and remove Attachment A.)

## General Information and Instructions for Respondents

1. Prepare proposals simply and economically. Provide a straightforward concise description of the Respondent's capability to satisfy the SFA's requirements. Emphasis should be placed on completeness and clarity of content.
2. Submit proposals for the performance of all the services described within this RFP. The SFA will not consider any deviation from these specifications and will reject such proposals.
3. The SFA may reject a proposal if the proposal is conditional or incomplete, deemed nonresponsive, or if it contains any alterations of form or other irregularities of any kind. The SFA may reject any or all proposals or waive any immaterial deviation in a proposal. The SFA's waiver of an immaterial deviation shall in no way modify the RFP document or excuse the Respondent from full compliance with all other requirements if awarded the contract.
4. Respondents are responsible for the costs of developing proposals and shall not charge the SFA for any preparation costs.
5. The SFA asks Respondents that do not intend to submit a proposal to notify the SFA in writing.
6. Respondents may modify their proposals after submission by withdrawing the original proposal and resubmitting a new proposal prior to the submission deadline. The SFA will not consider proposal modifications offered in any other manner, either oral or written.
7. Respondents may withdraw their proposal by submitting a written withdrawal request to the SFA, signed by the Respondent or their authorized agent, through the contact person named in the "Contact Information" provided on page iv of this RFP. Thereafter, a Respondent may submit a new proposal prior to the proposal submission deadline. Respondents may not withdraw their proposal without cause after the proposal submission deadline.
8. The SFA may modify the RFP prior to the date given for submission of proposals by posting an addendum on (Note to SFA: insert where notice will be posted, e.g., SFA Web site, etc.). The SFA will notify Respondents so they can obtain any addenda from the SFA's Web site, or request it by e-mail, postal mail, or fax.
9. The SFA reserves the right to reject all proposals for reasonable cause. If the costs of all proposals are excessive, the SFA is not required to award a contract.
10. The SFA will not consider more than one proposal from an individual, firm, partnership, corporation, or association under the same or different names.

Reasonable grounds for believing that any Respondent has submitted more than one proposal for work contemplated herein will cause the SFA to reject all proposals submitted by the Respondent. If there is reason to believe that collusion exists among the Respondents, the SFA will not consider any of the participants of such collusion in this or future solicitations.

11. The SFA will not consider a joint proposal submitted by two or more entities.
12. All proposals shall include the forms provided as attachments to this RFP. Respondents may copy these forms. A proposal is considered responsive if it follows the required format, includes all attachments and exhibits and meets all deadlines and other requirements outlined in this RFP.
13. The SFA shall not accept proposals after the submission deadline specified in the RFP and shall return the unopened proposals to the respective Respondents. The SFA will not consider late proposals under any circumstances.
14. Respondents are responsible for examining the entire RFP package, seeking clarification for any item or requirement that may not be clear to them, reviewing any relevant state and federal requirements, and checking all responses in their proposal for accuracy before submitting it.
15. Respondents must submit their questions regarding the information presented in this RFP to (*Enter designate office or person*) in writing by postal mail at (*Enter mail address*), e-mail at (*Enter e-mail address*), or fax at (*Enter fax number*), no later than (*Enter date and time*). The SFA will answer all questions received by the deadline in writing without exposing the query source. This will be the sole process for asking and answering questions regarding this RFP. Respondents may not contact SFA employees directly to ask questions. Unauthorized contact by the FSMC with other SFA employees or SFA Board Member regarding the RFP may result in disqualification.
16. The qualification data shall be submitted by each offeror along with the proposal, and shall include information that offeror is doing business with like school systems and is familiar with the regulations pertaining to operations in such environments, if applicable. FSMCs are not required to be doing business already in like SFAs.
17. The SFA reserves the right to negotiate the final terms and conditions of the contract, which may differ from those contained in the proposal, provided the SFA considers such negotiation to be in its best interest. Any change in the terms and conditions must not create a material change, which is any alteration or modification to the original terms stated in the RFP that would have resulted in different proposals from all Respondents. A material change will require the SFA to rebid the contract.
18. Interested Respondents are required/encouraged (*Select whether required or encouraged*) to inspect the SFA's premises prior to submitting a proposal in order

to determine all requirements associated with the proposed contract. The inspection of premises will occur during the Mandatory Tour. (Note to SFA: If tour is not mandatory, remove last sentence of this item.)

19. Respondents shall submit one paper copy or one copy in digital format (e.g., CD, DVD, flash drive, etc.). (Note to FSMC: The FSMC may choose the submission type (paper copy or digital copy). However, the SFA may request, at its discretion, that the FSMC submit a paper copy and copy in digital media format.)
- a. The paper copy must contain the original signature of the individual(s) authorized to bind the Respondent contractually and be labeled "Master Copy."
  - b. The Respondent must ensure the digital copy is complete and inclusive of all materials contained in the paper copy, including any required signatures. If there is an inconsistency between the paper and digital copies, the paper copy will take precedence.
  - c. The sealed proposal envelopes must be marked legibly with the SFA's RFP number and title, and the SFA name and address, as shown in the following example:

20. Firm Offer

- a. By submitting a response to this Request for Proposal, and if such response is not withdrawn prior to the time for opening proposals arrives, offeror understands and agrees that they are making a firm offer to enter into a contract, which may be accepted by the SFA and which will result in a binding contract.
- b. Such proposal is irrevocable for a period of ninety (90) days after the time of opening the proposal has passed. \_\_\_\_\_ **(FSMC must initial and date to show agreement)**

Proposal—Food Service Management Company

*(Enter FSMC Name Submitting RFP)*

*(Enter RFP Number)*

*(Enter RFP Title)*

*(Enter SFA Name)*

*(Enter SFA Procurement Contact)*

*(Enter SFA Procurement Contact Address)*

## Proposal Requirements

To be eligible for evaluation, a proposal must adhere strictly to the format set forth below; failure to do so may result in disqualification. Respondents must complete, label, and separate each section, and number all pages. The content and sequence of the proposal will be as follows:

Section	Title
A.	Cover Letter
B.	Table of Contents
C.	Attachments Checklist
D.	Minimum Qualifications
E.	FSMC Professional Standards
F.	Proposal Questionnaire
G.	Respondent References
H.	Authorization Agreement
I.	Fee Proposal
J.	Certifications

### A. Cover Letter

Only the individual(s) authorized to bind the Respondent contractually may sign the cover letter, which shall be a part of the proposal package. If the cover letter is unsigned, the SFA will reject the proposal. The SFA may reject the proposal if the Respondent fails to include the following required information:

- Name and address of responding company
- Organizational structure of the responding company (e.g., corporation, partnership, etc.)
- Respondent's Federal Employee Identification Number and Corporate Identification Number, if applicable
- Name, title phone number, fax number, and e-mail address of the representative who will be designated as the primary liaison to the SFA
- Name, title, phone number, and e-mail address of the representative(s) authorized to bind the Respondent in a contract if different from the primary liaison
- A statement expressing the Respondent's willingness to perform the services described in this RFP

- A statement expressing the Respondent's ability to perform the services required in the Scope of Work, including availability of staff and other required resources to meet all deliverables as described in this RFP
- A statement regarding the Respondent's proprietary information; if applicable, the Respondent must clearly mark in the upper right hand corner those pages to be considered proprietary (**Note: the Respondent cannot consider the entire proposal to be proprietary**)
- The following certification:

By signing this cover letter, I (we) certify that the information contained in this proposal is accurate and that all attachments required to be submitted as part of the proposal are certified to be true and binding upon our company.

## **B. Table of Contents**

Immediately following the cover letter, include a comprehensive Table of Contents that lists all submitted proposal sections, subsections, attachments, and materials.

## **C. Attachments Checklist**

The Respondent shall include all documents identified in the Attachments Checklist (Attachment B). The SFA may reject proposals that do not include the proper required attachments.

## **D. Minimum Qualifications**

The SFA will only consider Respondents that **meet all minimum qualifications** (as listed on Attachment C).

## **E. FSMC Professional Standards**

Establishes minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs (as listed on Attachment D).

## **F. Proposal Questionnaire**

The Proposal Questionnaire (Attachment E) is intended to provide the SFA with specific information concerning the Respondent's capability to provide services as described in this RFP. Respondents should limit their responses to the number of pages noted in the questionnaire and answer each question in the same order.

## **G. Respondent References**

Respondents must provide three references on the Respondent References form (Attachment F). The SFA reserves the right to contact any of the references listed, and retains the right to conduct reference checks with individuals and entities beyond those listed.

## **H. Authorization Agreement**

The Respondent or their authorized representative must sign the Authorization Agreement (Attachment G) and return it with the proposal package.

## **I. Fee Proposal**

The Respondent must complete the Fee Proposal (Attachment H) and return it with the proposal package.

## **J. Certifications**

The Respondent must complete the certifications (Attachments I, J, K and L) and return them with the proposal package.

## Evaluation of Proposals

Proposals will be opened on or after the date and time specified in the Schedule of Events. During the evaluation process, the SFA may ask Respondents to clarify information in the proposals, but Respondents may not change their proposals.

An error in the proposal may cause the SFA to reject that proposal; however, the SFA may, at its sole discretion, retain the proposal and make certain corrections. When determining if a correction will be made, the SFA will consider the conformance of the proposal to the format and content required by the RFP and that the Respondent's intent is clearly established based on review of the whole proposal. Based on that established intent, the SFA may choose to correct errors such as obvious grammatical or punctuation errors and arithmetic errors. The Master Copy of the proposal shall have priority over additional proposal copies.

The SFA will open proposals to determine if the proposals contain all the required information in accordance with this RFP. The SFA will evaluate qualifying proposals using the following criteria:

*(Note to SFA: SFA should establish a maximum score that allows the sum of all points to be equal to or less than the total maximum score.)*

Criteria	Maximum Points (Enter Set by SFA)
Cost	
Service Capability Plan (Proposed food service team such as Director and describes FSMC' s ability to provide services as stated in the RFP)	
Experience, References with like school systems and familiarity with regulations pertaining to such operations OR Plans for operation if this is a new company	
Financial Condition/Stability, Business Practices	
Accounting and Reporting Systems	
Personnel Management	
Innovation	
Promotion of the School Food Service Program	
Involvement of Students, Staff, and Patrons	
Other	
<b>TOTAL POINTS</b>	<b>100</b>

The SFA will score and rank selected proposals by assigning a score between zero and the maximum score to each proposal criterion. The SFA will recommend awarding the contract to the most responsive and responsible Respondent with the highest total proposal score.

## Weight Criteria

- a. After determining that a response satisfies the mandatory requirements stated in the RFP, the SFA shall use both objective analysis and subjective judgment in conducting a comparative assessment of the response. While price alone is not the sole basis for award, price remains the **primary consideration** when awarding a contract under this competitive request for proposal.
- b. In addition, after the initial screening process and review of references, a question and answer interview may be conducted with the FSMC. The FSMC may also be asked to make an oral presentation of their proposal as submitted with no modifications made to the RFP and contract language.
- c. The SFA's officers, employees, board members, or agents shall neither solicit nor accept gratuities, favors, gifts, nor anything of monetary value from contractors nor potential contractors in accordance with all laws, regulations, and policies. (2 CFR 200.318). To the extent permissible under state law, rules, or regulations, such standards shall be provided for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320)

- a. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible offeror is one whose financial, technical, and other resources indicate an ability to perform the services required.
- b. Respondent shall submit for consideration such records of work and further evidence as may be required by the SFA's Board or governing body.
- c. Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein shall be sufficient cause for the rejection of the proposal or termination of any subsequent contract.
- d. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used

## Award Criteria

- a. Proposals will be evaluated by the SFA committee based on the offer per meal/meal equivalent and the criteria, categories and assigned weights as stated herein below (to the extent applicable).
- b. Committee members must consist of SFA employees familiar with the regulations and requirements of the child nutrition programs.

- c. If a committee member is an agent for, employee of or in any manner associated with a FSMC, that FSMC must disclose this fact within the FSMC's proposal so the SFA may determine if there is a conflict of interest in violation of the conflict of interest policies of the SFA or a conflict under applicable state law.
- d. Each area of the award criteria must be addressed in detail in the Proposal.
- e. SFA will maintain records sufficient to detail the significant history of a procurement to include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

# **Attachments and Exhibits**

## Attachment A

### **Mandatory Tour**

The Mandatory Tour will include an escorted tour.

- The tour schedule includes the sites listed below.
- Prospective Respondents may not contact any sites or employees outside of the scheduled visit.
- The SFA requests that Respondents do not take pictures during the tour if the SFA has not obtained appropriate releases from parents, students, and/or employees. The SFA will permit photos in which no persons are depicted and which are directly related to the subject of the RFP.

(Note to SFA: Tours dates and times are at the discretion of the SFA. Be mindful of the limited times food service operations can be observed.)

### TOUR SCHEDULE

Tour begins at (*Enter Time*)

Where: (*Enter Site Name and Address*)

Second Site Tour begins at (*Enter Time*)

Where: (*Enter Site Name and Address*)

Third Site Tour begins at (*Enter Time*)

Where: (*Enter Site Name and Address*)

The SFA thanks all Respondents for abiding by our request to keep the disruption caused by the visit to a minimum.

Attachment B

**Attachments Checklist**

---

Respondent Company Name

Please complete this checklist to confirm that the items listed below have been included in the FSMC’s proposal. Place a checkmark or “x” next to each item submitted to the SFA. For the proposal to be considered, all required attachments must be returned, including this checklist. Submit one copy of your proposal in a sealed package.

Attachment	Attachment Name
_____	Cover Letter
_____	Table of Contents
_____	Attachments Checklist (B)
_____	Minimum Qualifications (C)
_____	FSMC Professional Standards (D)
_____	Proposal Questionnaire (E)
_____	Respondent References (F)
_____	Authorization Agreement (G)
_____	Fee Proposal (H)
_____	Certifications (I, J, K, L)

Attachment C

**Minimum Qualifications**

A Respondent must meet all of the following minimum qualifications to the SFA's satisfaction to be given further consideration. Failure to satisfy any of the minimum qualifications may result in the immediate rejection of the proposal.

As of (*Enter date*), both the Respondent's company and its key personnel meet all of the following minimum qualifications:

1. The Respondent's experience (*Enter number of years*) with food service programs.  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
2. The Respondent has the resources and ability to provide (*Enter number*) of meals per fiscal year for the SFA.  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
3. The Respondent has knowledge and experience with the School Breakfast Program and National School Lunch Program (*Enter any other programs that may be applicable*).  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
4. The Respondent has professional references that demonstrate and evidence the ability to perform the required services.  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
5. The Respondent is licensed to do business in the state of South Dakota.  
Yes \_\_\_\_\_ No \_\_\_\_\_

*(Note to SFA: The SFA should add any additional minimum qualifications, or edit minimum qualifications, as it deems necessary then delete this sentence before releasing RFP. For example, does the SFS require ServSafe Certification for the site managers?)*

## Attachment D

### FSMC Professional Standards

#### FSMC Employees Professional Standards

Federal Register Vol. 80, No. 40, dated March 2, 2015, referred to as the “Final Rule,” established minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs. In the Final Rule, the following definitions were established:

1. **School Nutrition Program Director.** The school nutrition program director is any individual directly responsible for the management of the day-to-day operation of school food service for all participating schools under the jurisdiction of the school food authority.
2. **School Nutrition Program Manager.** The school nutrition manager is any individual directly responsible for the management of the day-to-day operation of school food service for a participating school(s).
3. **School Nutrition Program Staff.** School nutrition program staff are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

The Final Rule established that these definitions apply to the function/role rather than the specific title within the school food service structure, and that the definitions apply whether or not the school food service is operated by an FSMC. Therefore, as of the effective date of this contract, the minimum professional standards established by the Final Rule, and described therein, shall apply to FSMC staff performing any of the duties described above.

The FSMC shall only place staff for work in the school district that meet the minimum professional standards outlined in Title 7, *Code of Federal Regulations (7 CFR, Section 210.30*, which can be viewed at the following Web page:

[http://www.fns.usda.gov/sites/d/files/cn/profstandards\\_flyer.pdf](http://www.fns.usda.gov/sites/d/files/cn/profstandards_flyer.pdf).  
[https://fns-prod.azureedge.net/sites/default/files/tn/ps\\_guide-highres.pdf](https://fns-prod.azureedge.net/sites/default/files/tn/ps_guide-highres.pdf)  
<https://www.fns.usda.gov/tn/guide-professional-standards-school-nutrition-programs>  
[https://www.ecfr.gov/cgi-bin/text-idx?SID=0c60e39ccbd1d33e4897880180e2433&mc=true&node=se7.4.210\\_130&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=0c60e39ccbd1d33e4897880180e2433&mc=true&node=se7.4.210_130&rgn=div8)

- The SFA shall ensure that all staff the FSMC proposes for placement meet the minimum professional standards.

- The FSMC shall ensure their employees take the required annual training as outlined in the professional standards and provide certification of such training to the SFA. The FSMC shall remove from the SFA premises any staff who fail to take the required annual training.
- Each year, the FSMC shall provide the SFA with a list of employees and evidence that the employees listed meet the professional standards. The FSMC must contact SD CANS if any proposed employee does not meet the professional standards.

## Attachment E

### Proposal Questionnaire

This proposal questionnaire is intended to provide the SFA with specific information concerning the Respondent's capability to provide services as described in the RFP. Please be as concise as possible and limit your responses **to no more than two pages per question, unless instructed otherwise. Type each question in the same order as listed in the questionnaire.**

*(Note: the SFA may choose to add or delete any provisions to their RFP as applicable.)*

1. Provide a general description of your company's qualifications and experience relevant to the minimum qualifications in Attachment C, along with any necessary substantiating information. Limit your responses to information about your company's capabilities.
2. Provide a statement indicating the year your company was founded; what the primary business(es) of the company is(are); the length of time the company has been providing food service management services (consulting, food purchase, etc.) and related services as described in this RFP. In addition, provide the duration and extent of experience the company has with similar SFA food management services.
3. Provide a general description of how your company will be able to provide the experience, ability, and financial standing necessary to meet the requirements set forth in this RFP.
4. Provide a complete list of SFAs that have discontinued or terminated your company's services in the last five years and the reason(s) why.
5. Provide an organization chart for your company, a description of the lines of communication, and the responsibilities at each corporate level.
6. Provide a complete balance sheet or annual report (verified by a certified public accountant) for the last three years of operation. Any FSMC without a complete balance sheet or annual report (verified by a certified public accountant) for the last three years of operation shall state the reason(s) therefore and provide any complete balance sheet or annual report (verified by a certified public accountant) for any year available.
7. Provide a description of promotional and marketing materials you will use to attract students to the program.
8. Provide a recommended transition plan that describes the steps the Respondent will take to begin providing the services described in this RFP.

## Attachment F

### Respondent References

List three references to which the Respondent has provided food service management services within the past (*Insert number*) year(s). If not available, state the reason(s) such references are not available.

Failure to complete and return this Attachment will cause your proposal to be rejected.

Reference 1		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 2		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		
Reference 3		
Name of Reference		
Street Address		
City	State	Zip Code
Contact Person	Contact Title	Contact Phone Number
Brief Description of Services Provided		
Dates of Service		

Attachment G

**Authorization Agreement**

Request for Proposal for Food Service Management Company  
RFP Number: *(Enter RFP Number)*

We, *(Enter FSMC Name)*, by our signature on this document certify the following:

1. That we will operate in accordance with all applicable South Dakota state and federal laws, regulations, and statutes.
2. That the terms, conditions, warranties, and representations made within this RFP and our proposal shall be binding upon us and shall be considered a part of the contract as if incorporated therein.
3. That the proposal submitted is a firm and irrevocable offer good for one year.
4. That we have carefully examined all terms and conditions set forth in the prototype Fixed-Price Contract issued by *(Enter SFA Name)*.
5. That we have made examinations and verifications, and are fully conversant with all conditions under which services are to be performed for *(Enter SFA Name)*.
6. That negligence in the preparation or presentation of, errors in, or omissions from proposals shall not relieve us from fulfillment of any and all obligations and requirements in the resulting contract.

FSMC Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Web Site Address: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

Date Signed: \_\_\_\_\_

## Attachment H

### Fee Proposal

*(Note to SFA: The SDDOE encourages SFAs to require potential bidders to provide a detailed breakdown of costs that are included in the fixed cost price. SFAs should consult their legal counsel regarding the need for and benefit to identifying costs in a Fixed-Price Contract. If your SFA chooses to exclude a breakdown of costs, delete the table titled “Cost Breakdown” below. At a minimum, you must request that the Respondents submit the cost per meal information.*

*If the SFA will allow adjustments to payments, it must be defined in the RFP. See pages 41-42 of the USDA Guidance for additional information. )*

All costs are based on average daily participation of **(SFA Enter average daily participation #)** number of meals served on **(SFA Enter # of School Days)** number of school days.

<b>COST BREAKDOWN</b>			
<b>Respondent Instructions</b>			
⇒ Provide a breakdown of all costs included in the fixed price, including personnel costs.			
⇒ Provide the cost per meal; base all food costs <b>on the attached 21-day cycle menu</b> .			
⇒ <b>Clearly identify all costs</b>			
Item #	Description <i>(Include All Goods and Services included in the Fixed Price)</i>		Annual Cost
1.			\$
2.			\$
3.			\$
4.			\$
5.			
6.			
7.			
8.			
9.			
10.			
<b>Sub Total</b>			\$
<b>Personnel Costs</b>			<b>Annual Cost</b>
1.	Management Fee Per Meal	\$	
2.	Employee Fee Per Meal	\$	
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
<b>Sub Total</b>			\$
<b>GRAND TOTAL</b>			\$

*(Note to SFA: SFA provides Units in column 2. Delete school programs not applicable. Contact CANS if the SFA has additional meals or changes that need to be inserted.)*

COST PER MEAL			
<b>Respondent Instructions:</b> ⇒ Provide the cost per meal; base all food costs <b>on the attached 21-day cycle menu.</b> ⇒ Prices must not include values for USDA Foods and must include all meal programs applicable.			
1. LINE ITEM	2. UNITS	3. RATE	4. TOTAL
<b>Breakfast</b>	(SFAs <i>Enter a number;</i> <b>Do not</b> use a percentage)	\$	\$
<b>Lunch</b>	(SFAs <i>Enter a number.</i> <b>Do not</b> use a percentage)	\$	\$
<b>Afterschool Snacks</b>	(SFAs <i>Enter a number.</i> <b>Do not</b> use a percentage)	\$	\$
<b>Nonreimbursable Meals</b>	(SFAs <i>Enter a number.</i> <b>Do not</b> use a percentage)	\$	\$
<b>TOTAL</b>		\$	\$

## Attachment I

### **Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters**

Respondents should refer to the relevant federal regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 7 *CFR*, Part 3018, "New Restrictions on Lobbying," 7 *CFR*, Part 3017, "Government-wide Debarment and Suspension (Nonprocurement)," and 7 *CFR*, Part 3021, "Government-wide Requirements for Drug-Free Workplace (Grants)." The certification shall be treated as a material representation of fact upon which reliance will be placed when the SFA determines to award the covered transaction, grant, or cooperative agreement.

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#### **Certification Regarding Lobbying**

**Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of (School Food Authority) in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of *School Food Authority* in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Name/Address of Organization

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Name/Title of Submitting Official

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Signature

Date \_\_\_\_\_

## Attachment J

### Disclosure Of Lobbying Activities and Instructions

**Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352**

(See next page for public burden disclosure)

Approved by  
OMB

<p>1. Type of Federal Action:</p> <p>a. Contract</p> <p>b. Grant</p> <p>c. Cooperative agreement</p> <p>d. Loan</p> <p>e. Loan guarantee</p> <p>f. Loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. Bid/Offer/Application</p> <p>b. Initial Award</p> <p>c. Post-Award</p>	<p>3. Report Type:</p> <p>a. Initial filing</p> <p>b. Material change</p> <p>For Material Change Only:</p> <p>Year _____ Quarter _____</p> <p>Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime</p> <p><input type="checkbox"/> Subawardee</p> <p><input type="checkbox"/> Tier, if known</p> <p>Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>
<p>6. Federal Department/Agency:</p>		<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>
<p>8. Federal Action Number, if known:</p>		<p>9. Award Amount, if known:</p> <p>\$</p>
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>		<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)</p>
<p>11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		<p>Signature:</p>
		<p>Print Name:</p>
		<p>Title:</p>
		<p>Telephone No: (    )</p>
<p>FEDERAL USE ONLY:</p>		<p><i>Authorized for Local Reproduction</i> Standard Form (SF—LLL) (Rev. 7-97)</p>

## INSTRUCTIONS

### Disclosure of Lobbying Activities (SF-LLL)

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget (OMB) for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, U.S. Department of Agriculture, Food and Nutrition Service.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., RFP number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter last name, first name, and middle initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and phone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## Attachment K

### Debarment, Suspension, and Other Responsibility Matters

#### Debarment and Suspension and Other Responsibility Matters Primary Covered Transactions

School Food Authorities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

---

Contractor/Company Name

Award Number, Contract Number, or Project Name

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Name(s) and Title(s) of Authorized Representatives

---

Signature(s)

Date

Attachment L

Certificate of Independent Price Determination

Both the SFA and FSMC shall execute this Certificate of Independent Price Determination.

Name of FSMC

Name of SFA

- A. By submission of this offer, the offeror (FSMC) certifies and, in the case of a joint offer, each party thereto certifies as to its own organization that in connection with this procurement:
1. The prices in this offer have been arrived at independently...
2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed...
3. No attempt has been made or will be made by the offeror to induce any person or firm to submit, or not to submit, an offer for the purpose of restricting competition.
B. Each person signing this offer on behalf of the offeror certifies that:
1. He or she is the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or
2. He or she is not the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this vendor and its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows (provide detail):

Two horizontal lines for providing details of any exceptions to the investigation statement.

Signature of FSMC's Authorized Representative Title Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.

Signature of SFA's Authorized Representative Title Date

Note: Accepting a Respondent's offer does not constitute award of the contract.

## Exhibit 1

### **Responsibilities – Food Service Management Company**

1. The FSMC shall comply with the applicable rules, regulations, policies, guidance, and instructions of the SA and USDA and any additions or amendments thereto, including
  - USDA Regulation 7 CFR Parts
    - 210 (National School Lunch Program),
    - 215 (Special Milk Program),
    - 220 (School Breakfast Program),
    - 225 (Summer Food Service Program),
    - 226 (Child & Adult Care Food Program including At-Risk After School Care),
    - 245 (Free and Reduced Price Eligibility),
    - 250 (Food Distribution),
  - 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
  - Government wide Debarment and Suspension [Executive Orders 12549 and 12689](2 CFR Part 200.213 and Appendix II to 2 CFR Part 200 (I));
  - Fresh Fruit & Vegetable Program (which currently does not have codified regulations).

Company personnel responsible for the preparation of menus will maintain access to these meal pattern regulations currently available at <http://www.fns.usda.gov/>.

2. The FSMC shall not sell or offer on the premises of any school, any food, or beverage item other than the prescribed meals except those a la carte items authorized by the SFA. The FSMC cannot directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)]
3. The FSMC shall serve on such days and at such times as requested by the SFA according to the applicable programs:
  - a. Lunches, breakfasts, snacks, afterschool snacks, and/or suppers priced as a unit, which meet the requirements of respective USDA regulation in 7 CFR Part 210.10 (School Lunch and Afterschool Snacks, Seamless Summer), 220.8 (School Breakfast and Seamless Summer), 226.20 (Child & Adult Care Food Program including afterschool supper), 225.16 (Summer Food Service). School Lunches shall also meet requirements in order for the SFA to claim the performance-based reimbursement.
  - b. Fresh Fruit and Vegetable Program billed according to actual food, labor, and other itemized allowable costs approved by the SFA.
  - c. Other foods as may be agreed upon by the FSMC and the SFA.
4. The FSMC shall serve free and reduced-priced meals, after school snacks or free milk, if applicable, to those children designated by the SFA to meet program requirements and in order to offer a la carte food service.
5. Special Dietary Needs
  - a. FSMC and SFA must follow current federal and state regulations regarding providing for special dietary needs for enrolled students. Additional information is available at <https://www.fns.usda.gov/school-meals/faqs> . Until the new guidance document has been revised and posted, refer to *SP 59-2016, September 27, 2016, Modifications to*

*Accommodate Disabilities in the School Meal Programs*, for the current requirements and guidance.

- b. Exceptions for disability reasons: FSMC must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitution(s) that includes recommended alternate foods, unless otherwise exempted by USDA. Such statement must be signed by a licensed physician or (MD or DO), advanced practice nurse (APN) with prescriptive authority or physician assistant.
  - c. Exceptions for non-disability reasons: FSMC, with instructions from the SFA, may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Except with respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority.
  - d. Fluid milk substitutions for non-disability reasons: FSMC, with instructions from the SFA may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional standards established under 7 CFR § 210.10(d)(3)) and 7 CFR § 220.8. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority. Requisites for fluid milk substitutions:
    - i. SFA must inform CANS if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and
    - ii. A medical authority or student's parent or legal guardian must submit a written request for a fluid milk substitute identifying medical or other special dietary need that restricts the student's diet.
    - iii. Substitution approval. The approval for fluid milk substitution must remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.
    - iv. Required Documentation: Information about meal modifications must be included in the following documents: (1) medical statements or preference forms, (2) production records (3) recipes (4) HACCP-based food safety plans and (5) meal counting and claiming tracking. Production records should indicate the meal substitutions/accommodations and the number of meal served for special diets.
6. The FSMC shall participate in the parent, teacher, and student advisory boards.
  7. The FSMC shall implement the collection procedures as specified by the SFA. Distribution of tickets and obtaining accurate meal counts will be completed in accordance with the SFA's free and reduced price meal policies.
  8. The FSMC and the SFA shall jointly verify monies in the SFA's program and the SFA shall then deposit daily all monies in the SFA account. *(Note: If the SFA completes meal counts and collects all payments, paragraphs 7 and 8 can be deleted.)*

9. During the term of this Contract, FSMC may have access to SFA confidential information (“SFA Confidential Information”), including student identifiable confidential information that is protected from disclosure by federal law (42 U.S.C. §1758(b)(6)).
  - a. FSMC agrees to hold any SFA Confidential Information in confidence during the term of this Contract and thereafter.
  - b. FSMC further agrees that FSMC has no independent rights to this information and will not make any SFA Confidential Information available in any form to any third party or use Confidential Information for any purpose other than the performance of FSMC’s obligations under this Contract.
  - c. FSMC will use reasonable security measures to protect SFA’s Confidential Information from unauthorized access, use or disclosure and ensure that SFA’s Confidential Information is not disclosed or distributed in violation of the terms of this Contract.
  - d. Immediately upon the termination or expiration of this Contract, FSMC shall return to SFA any copies of SFA’s Confidential Information provided to FSMC by SFA, and FSMC will destroy all other copies of SFA’s Confidential Information in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.
  - e. If the FSMC is responsible for taking meal counts or has any access to students’ personally identifiable information (PII), the FSMC personnel shall sign confidentiality statements to be placed on file with the SFA and FSMC staff shall agree that any information about eligibility, account balances, payments, accounts, special diets, or other PII shall not be discussed with anyone outside of those who have a need to know as designated by the SFA personnel.
10. The SFA shall abide by the policy for overdue accounts as follows: *SFA insert policy for children with overdue accounts and how these meals shall be billed to the SFA. (Note that if they are incomplete meals, they cannot be claimed for reimbursement and payment cannot come from the nonprofit food service account. Note that if the SFA completes meal counts, this paragraph needs to be modified to specify FSMC compliance with practices and how any incomplete meals (such as sandwich and milk) are tracked and basis for payment to FSMC.)*
11. The FSMC shall prepare and maintain such records as the SFA will need to support its claim for reimbursement, and shall, at a minimum, report claim information to the SFA at the end of each calendar month. (7 CFR 210.16(c)(1)) This report shall include the number of meals served, by type. FSMC shall retain such records and these shall be made available to the SFA immediately upon request.
12. The FSMC agrees to provide the SFA with necessary financial information, to include detailed breakouts of all income and expenditure categories for reporting to the SA.
13. The FSMC shall not use SFA facilities for preparation of food to be served at any location other than for the SFA’s approved program without the permission of the SFA and paid according to procedures outlined in the contract.
14. If food or meals are proposed to be prepared outside the school, the FSMC shall maintain State and local health certification of their facility, and shall maintain this health certification for the duration of the contract. (7CFR 210.16(c)(2)) FSMC will comply with requirement to post results of inspections.
15. If reimbursement is denied or recovered as a direct result of the failure of the FSMC to comply with the provisions of this contract and/or Program requirements, the FSMC shall assume responsibility for the amount denied. It cannot be billed back to the SFA in any manner.
16. Production records of food prepared and delivered will be maintained and provided to the SFA by the FSMC each month, to ensure program requirements are being met;

17. Buy American: SFA and FSMC will comply with the Buy American provision for contracts that involve the purchase of food. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
  - a. The SFA participates in the NSLP and SBP and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).
  - b. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. Copies of documentation must be kept on file at the SFA.
  - c. To be considered for the alternative or exception, FSMC must submit request in writing to SFA and be approved. Approval will be retained with purchase records. The request must include the:
    - i. Alternative substitute (s) that are domestic and meet the required specifications:
      1. Price of the domestic food alternative substitute (s); and
      2. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
    - ii. Reason for exception: limited/lack of availability or price (include price):
      1. Price of the domestic food product; and
      2. Price of the non-domestic SP-24-2016).
18. Documentation that the FSMC requests of the SFA for exceptions must be in place as follows:
  - a. Requests for consideration on the use of domestic alternative foods before approving an exception.
  - b. Documentation of the use of a non-domestic food exception when competition reveals the cost of domestic is significantly higher than non-domestic food.
  - c. Use of a non-domestic alternative food due to the domestic food not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality
19. Upon request, make all accounts and records pertaining to its SFA available to the SA and to Food Nutrition Services (FNS), for audit or review at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final claim for reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for resolution of the issues raised by the audit. (7 CFR 210.9(b)(17))
20. SA representatives or their designees, auditors of the USDA and the Comptroller General of the United States and the SFA’s independent auditors shall have access to all such records for audit and review upon request at a reasonable time and place for making audit, examination, excerpts, and transcriptions. Authorized representatives of the SFA, the SA, or the USDA shall have the right to conduct on-site administrative reviews of the food service program (7CFR Part 210.23(c) and 2 CFR 200).
21. SFA may propose a 21-day menu cycle or ask the FSMC to propose a 21-day menu cycle that follows the USDA food-based menu plan effective January 26, 2012 and appropriate phased-in sections shall be followed. Changes to the cycle may be made only with the approval of the School Food Authority (7CFR Part 210.16(b)(1)).
22. The FSMC shall promote maximum participation in the Programs, and shall not promote A la carte over reimbursable meals.
23. In accordance with 2 CFR 200, 324(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review,

procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a. The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - b. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
24. Fresh Fruit and Vegetable Program (FFVP): (if applicable) In the event that FSMC provides management services for the FFVP at any of SFA's Food Service Locations, SFA and FSMC agree to operate the FFVP in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the FFVP Handbook for Schools. SFA and FSMC further agree that not more than 10% of the total funds awarded to the school and/or schools for operation of the FFVP may be used for administrative expenses. The costs for FFVP must be actual, not a percentage of fees. This does not mean that the FSMC is entitled to 10% of the actual award. The FSMC shall ensure that it
- Documents and tracks FFVP expenses separately and makes this documentation easily accessible for the SFA to review and submit an accurate claim.
  - Time certification of FFVP Labor time is required.
  - Documentation must clearly show allocation of costs charged to the FFVP, i.e. specific labor time charges, actual costs of fresh fruits and vegetables, administrative fees that do not exceed 10% of the overall grant.
  - Follows all FFVP policies and rules to guarantee the program is operated in compliance with FNS standards.
  - Develops cycle menu for FFVP for participating schools. It is recommended that, including portion sizes are included in the proposed menu cycle

## Exhibit 2

### Responsibilities – School Food Authorities (SFA)

1. The SFA shall adhere to the procurement standards specified in §210.21 when contracting with the food service management company (7CFR 210.16(a)(1))
2. The SFA shall ensure that FSMC operation of the SFA's school food service is in conformance with the SFA's agreement under the program. (7CFR 210.16(a)(2)) SFA will comply with requirement to post results of inspections.
3. The SFA shall retain control of the quality, extent, and general nature of its food service and the prices to be charged to the children for meals, milk, after school snack, a la carte items, adult meals, and vending machine items, as applicable. The SFA shall maintain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation. (7CFR Part 210.16(a)(4));
4. The SFA must receive all food service revenue, including rebate payments resulting from participation in any Rebate Programs for processed donated foods. The food service revenue shall flow through the SFA chart of accounts. The food service revenue shall be used only for allowable allocable costs for the SFA nonprofit food service. (7CFR 210.14(a))
5. The SFA participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7CFR Part 210.21(d).
6. No interest or finance charges that may accrue under this Contract may be paid from SFA's Nonprofit School Food Service Account
7. The SFA shall monitor the food service program through periodic on-site reviews to include the inspection of meals, food preparation, storage and service areas, sanitation practices, and, if included in the contract, procedures for accurately counting meals for the claim. (7CFR 210.16(a)(3))
8. The SFA shall have responsibility for meal count accuracy (a) *Internal controls*. The school food authority shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement. (7CFR 210.8 (a))
9. The SFA shall retain the right to approve the menus and recipes for meals and other food to be served or sold to students to ensure compliance with the rules and regulations of the SA and the USDA.  
The SFA shall approve all a la carte items and the prices charged for those items in advance of their sale by the FSMC. Any negotiated contract cost adjustments is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. These must be approved by the State agency and accurately reflect current conditions. Substantive changes of the Contract will require the SFA to rebid the Contract.
10. The SFA shall ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established. (7CFR 210.16(a)(8))
11. The SFA shall retain signature authority on the SA-SFA agreement, free and reduced price policy statement and claims for reimbursement. (7CFR 210.16(a)(5))

12. The SFA has responsibility for developing, distributing, and collecting free and reduced price letter/application. (7CFR 245.10(a)) The SFA also has responsibility for determination of eligibility, conducting hearings, and for verification. (7CFR 245.6(a), 245.6(b), 245.7)
13. The SFA is responsible for participation in Direct Certification.
14. The SFA shall ensure applicable health certification(s) is maintained and that all State and local regulations are being met by FSMC preparing or serving meals at SFA's facilities. (7CFR 210.16(a)(7))
15. The SFA shall conduct annual reviews of storage facilities. The FSMC/SFA
  - a. May store and inventory donated foods together with foods it has purchased commercially for the SFA's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in §250.51(d)—i.e., use all donated ground beef and ground pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service
  - b. Must ensure that its system of inventory management does not result in the SFA being charged for donated foods.
16. The SFA shall inform FSMC of any requested adjustments to menus and monitor implementation of said adjustments.
17. The SFA shall be responsible for resolution of program review and audit findings. FSMC shall fully cooperate with SFA in resolving review and audit issues. FSMC shall indemnify SFA for any fiscal action, claims, losses, or damages, fault, fraud, required repayment or restoration of funds, including reasonable attorney's fees incurred in defending or resolving such issues, that results from FSMC's intentional or negligent acts.
18. The SFA reserves the right to cancel or shorten any school day and agrees to give FSMC at least twenty-four (24) hours advance notice of such changes except in an emergency when as much advance notice as possible will be given.
19. SFA representatives have the option to discuss with the Company any area of non-performance in order to meet all requirements and regulations on a daily basis.
20. The contract awarded to the successful responded will be for one year. The SFA may annually renew this Contract for four additional one year periods upon agreement between both parties. Execution of all contracts and amendments is contingent on approval by the South Dakota Department of Education (SDDOE). The SFA may cancel the contract upon notification from the SDDOE that it or any part of the bidding process has been determined noncompliant with applicable state and federal laws and regulations.
21. The SFA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These affirmative steps must include:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

## Exhibit 3

### FSMC Employees

1. (NOTE to FSMC: This paragraph will need revision depending on if the SFA retains any staff.)  
The FSMC shall be responsible for supervising and training food service personnel, including SFA-employed staff. Supervision activities include employee and labor relations personnel development, and hiring and termination of FSMC management staff, except for the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
2. The SFA and FSMC shall comply with the Fair Labor Standards Act, as amended, to include Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5) pursuant to 2 CFR 200, .
3. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of SFA premises, as established by the SFA and furnished in writing to the FSMC.
4. The FSMC shall provide daily on-site supervisory personnel for the overall food service.
5. The FSMC shall provide worker's compensation coverage and unemployment insurance for its employees.
6. The FSMC shall maintain its own personnel and fringe benefit policies for its employees, subject to review by the SFA.
7. The FSMC shall be responsible for hiring an adequate number of employees for efficient operation and will provide this information to the SFA. The FSMC shall provide and pay a staff of qualified management (and operational) employees assigned to duty on SFA's premises for efficient operation of the Programs. The FSMC must ensure that the FSMC employees providing services for the school meal programs have the required annual training and show compliance with the annual training standards
8. All persons employed by the FSMC shall be employees of the FSMC and neither the FSMC nor any agent or employee of the FSMC shall be or be deemed an employee of the SFA. Neither party shall, during the term of this contract or for one year thereafter, solicit to hire, terminate, or contract with either party's employees who manage any services or any other employee or are highly compensated employees ("One-Year Non-Solicitation"). In the event of any breach of such One Year Non-Solicitation, the breaching party shall pay and the injured party shall accept an amount equal to the annual salary of the relevant employee as liquidated damages.
9. The FSMC shall provide the SFA with a list of its personnel policies, and the SFA shall review and provide written approval in accordance with the SFAs requirements. (Note to SFA: think in terms of weapons, drugs, registered sex offenders, access to facilities, use of keys, etc.)
10. The SFA shall have final approval regarding the hiring of the FSMC's site manager.
11. The FSMC and SFA shall mutually agree upon staffing patterns.
12. The SFA and FSMC shall mutually agree upon the use of student workers.
13. The SFA may request in writing the removal of an employee of the FSMC who violates health requirements or conducts himself/herself in a manner of which is detrimental to the physical, mental, or moral well-being of students or staff.
14. In the event of the removal or suspension of any employee, the FSMC shall immediately restructure its staff without disruption in service.

15. All food service personnel assigned to each school shall be instructed on the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.
16. Professional Standards for Local School Nutrition Personnel:
  - a. The FSMC must ensure that the FSMC employees providing services for the school meal programs have the required annual training and show compliance with the annual training standards FSMC is required to provide documentation to the SFA showing the training hours and topics completed by the FSMC employees.
  - b. If the FSMC staff person performs food service director type duties, but reports to a district business manager who is responsible for the school district's school food service activities, both individuals would be responsible for meeting the training standards for program directors and comply with the professional standards requirements.
  - c. Minimum Hiring Standards for Food Service Directors: USDA provides the minimum hiring standards in 7 CFR 210.30 (2). The student enrollment includes total enrollment in all schools in all SFAs in all FSMC contracts for an individual food service director.
17. The FSMC shall comply with all SFA building rules and regulations.

### **Use of Facilities and Equipment**

1. The SFA shall have access, with or without notice to the FSMC, to all the SFA's facilities used by the FSMC for purposes of inspection and audit.
2. The SFA shall make available without any cost or charge to the FSMC the areas and premises agreeable to both parties in which the FSMC shall render its services. The FSMC shall make no alterations, changes, or improvements to said areas without obtaining written consent from the SFA with identification of responsibility for costs.
3. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to the SFA and comply with all applicable laws, ordinances, rules, and regulations of federal, state, and local authorities.
4. The SFA shall provide at its expense necessary expendable equipment including, but not limited to, silverware, table service, chinaware, serving trays, glassware, pots, pans, and utensils; and shall periodically replace said expendable equipment as items become worn, broken, used, lost, or otherwise disposed of up to the amount of the original inventory, except for replacements caused by FSMC's negligence which shall be the responsibility of the FSMC.
5. The SFA shall provide and maintain at its expense necessary inter-school vehicles, satellite transporter units, and equipment including operating costs for it.
6. The FSMC shall take reasonable care in the use of the premises, equipment, vehicles, and other items furnished by SFA.
7. The FSMC and the SFA shall inventory the food, equipment and supplies owned by the SFA at the beginning of the school year, including but not limited to flatware, trays, chinaware, glassware, and kitchen utensils, and ownership shall remain with SFA.
8. The FSMC shall purchase and maintain an inventory of expendable equipment necessary for the food service (and at the inventory level as specified by the SFA).
9. Facilities and equipment at the SFA as well as food purchased for the SFA shall be used solely for meals and events at the SFA. Use of facilities and equipment for preparation of meals for other entities must be identified in the RFP process and payment made by the FSMC to the SFA for these meals prepared under separate contracts or agreements. Examples include but are not limited to preparation of meals for programs not operated by the SFA such as other schools, child care centers, Head Start sites, senior meals, summer programs, and other catering.  
The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, labor, and the FSMC's overhead and administrative expense if applicable to providing such service. USDA donated foods shall not be used for these special functions.
10. The SFA shall furnish and install any equipment and make any structural changes needed to comply with federal, state, and local laws, ordinance, rules, and regulations.
11. The FSMC shall not remove food preparation and serving equipment owned by the SFA.
12. The SFA shall repair and service equipment except when damages result from the use of less-than-reasonable care by the employees of the FSMC.
13. The SFA shall not be legally responsible for loss or damage to equipment owned by the FSMC located on the SFA premises.

14. The FSMC shall provide a written notification to the SFA of any equipment belonging to the FSMC within ten days (10) of its placement on SFA premises and must receive written approval.
15. The SFA reserves the right, at its sole discretion, to use its facilities to sell or dispense any food or beverage before or after the regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Programs.
16. The SFA shall return facilities and equipment to the FSMC in the same condition as received when the SFA uses the facilities for extra-curricular activities.
17. The SFA shall be responsible for removing rubbish and garbage resulting from food service operation after it has been placed by FSMC in containers furnished by the SFA for such purposes.
18. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as are necessary for the operation of the food services to be furnished hereunder.
19. The SFA shall not permit any interruptions in utility service except in an emergency or for necessary repairs or for improvement of the service, and in such case the SFA agrees to notify the FSMC immediately of any interruption or proposed interruption in utility service.
20. The SFA shall provide sanitary toilet facilities for the employees of the FSMC.
21. The SFA shall provide the FSMC with local and long distance telephone service and internet connections. Cell phones or other communication devices shall be the responsibility of the FSMC.
22. The SFA must give prior approval and have final authority for the purchases of the equipment used for storage, preparation, or delivery of school meals. Provisions for equipment purchases that entail repayment to the FSMC over a period in excess of one year are not permitted.
23. The FSMC shall surrender to the SFA upon termination of the contract all equipment and furnishings belonging to the SFA in good repair and condition.
24. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and donated foods owned by the SFA.
25. The FSMC shall surrender to the SFA upon termination of the contract all records pertaining to the operation of the food service, to include all production records, recipes, menus, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings. The school is cognizant that some of this is proprietary and shall ensure that it is only shared with authorized personnel.
26. In accordance with 7 CFR 250.52(c), when a contract terminates, and is not extended or renewed, the FSMC must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the SFA's discretion, return other unused donated foods. The SFA must also ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year.
27. The premises and equipment provided by the SFA for use in its nonprofit food service program shall be in good condition and maintained by the SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health including, without limitation, Occupational Safety and Health Administration regulations. The SFA further agrees that any structural or nonstructural modifications or alterations to the workplace or the premises necessary to comply with any statute or governmental regulation shall be the responsibility of the SFA and shall be at the SFA's expense. This provision shall survive termination of this Contract.
28. All USDA Foods shall remain with the SFA.

29. Ownership of all nonexpendable supplies and capital equipment shall remain with the SFA. However, the FSMC must take such measures as may be reasonably required by the SFA for protection against loss, pilferage, and/or destruction

## Exhibit 5

### Sanitation

1. The FSMC shall place garbage and trash in containers in designated areas as specified by the SFA.
2. The SFA shall remove all garbage and trash from the designated areas.
3. The FSMC shall clean the kitchen and dining room area including dining tables and chairs.
4. The SFA shall clean ducts and hoods above the filter line.
5. The SFA shall provide extermination services as needed.
6. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.
7. The FSMC shall have and maintain at each site a Food Safety Plan: HACCP-Based Standard Operating Procedures.

**Exhibit 6**

**(Note to SFA: SFA to complete after Contract is awarded)**

*(Insert SFA Logo Here, Optional)*

# **Prototype Cover Page**

**Fixed-Price Contract  
FOOD SERVICE MANAGEMENT COMPANY**

**(Note to SFA: SFA to complete after Contract is awarded)**

*(Insert SFA Logo Here, Optional)*

**Prototype**  
**Fixed-Price Contract**  
FOOD SERVICE MANAGEMENT COMPANY

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*(Enter SFA Name)*  
FOOD SERVICE PROGRAM

*(Enter SFA Address)*

*(Enter SFA Phone Number)*

*(Enter SFA Fax Number)*

*(Insert SFA Logo Here (Optional))*

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## Prototype Fixed-Price Contract

### I. Introduction

The (insert district/agency name), hereinafter referred to as the school food authority (SFA), enters into this Contract with (insert food service management company name), hereinafter referred to as the food service management company (FSMC) to provide food service management assistance for the SFA's food service program, hereinafter referred to as "Services." This Fixed-Price Contract incorporates the associated RFP as if set forth in its entirety. **During the term of this Contract, the FSMC will provide services to the SFA as described in the Scope of Work (Exhibit A) of this Contract.**

### II. General Terms and Conditions

#### A. Term

The term of this contract is one year. The FSMC shall commence providing Services under the Contract on (Enter date), and continue through (Enter date). The effective date may be different from July 1, but the termination date must be June 30. The effective date may not occur prior to the date on which the contract is signed by both parties and approved by the State agency.

After careful consideration, the SFA may annually renew this Contract for four additional one year periods upon agreement between both parties. Execution of all contracts and amendments is contingent on approval by the South Dakota Department of Education (SDDOE). The SFA may cancel this Contract upon notification from the SDDOE that it or any part of the bidding process has been determined noncompliant with applicable state and federal laws and regulations.

#### B. Designated Contract Liaisons

SFA Liaison for Services		FSMC Liaison for Services	
Name:		Name:	
Title:		Title:	
Phone:	Cell Phone:	Phone:	Cell Phone:
Fax:	E-mail:	Fax:	E-mail:

Respondents shall serve or deliver by postal mail all legal notices to:

SFA	FSMC
Name:	Name:
Title:	Title:
Address:	Address:

### C. Fees

#### 1. Fixed-Price Contracts

The SFA will pay the FSMC at a fixed rate per meal based on actual meal counts. The fixed rate per meal includes all fees and charges indicated in the Schedule of Fees (Exhibit B) of this Contract. The SFA must determine, and the FSMC shall credit the SFA for, the full value of U.S. Department of Agriculture (USDA) Foods. The FSMC's Fixed-Price invoice will be fully compliant with procurement requirements for the National School Lunch, School Breakfast, and Special Milk Programs, set forth in Title 7, *Code of Federal Regulations (7 CFR)*, parts 210, 215, and 220, and the USDA Food and Nutrition Service (FNS) Final Rule issued Wednesday, October 31, 2007. Because the SFA retains any discounts, rebates, and other credits, the FSMC shall take the same into account when formulating their prices for this Fixed-Price Contract.

All fee/rate increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by SFA.

CPI Fee increases for the upcoming Contract renewal year must be submitted to SFA by April 1 of each year.

No other fee increases will be allowed.

For the purpose of computing the foregoing meal counts, the number of National School Lunch Program (*including Afterschool Snacks and Seamless Summer*), *School Breakfast Program, Summer Food Service Program, Child & Adult Care Food Program (including afterschool supper)* meals served to children shall be determined by actual count.

Payments for the Fresh Fruit and Vegetable program

#### 2. Payment Terms

The FSMC shall submit (*Enter weekly or monthly*) invoices by (*Enter day*) of the following month that reflect all activity for the previous (*Enter week or calendar month*). The FSMC must submit detailed cost documentation (*Enter weekly or monthly*) to support all charges to the SFA. Charges and expenses are included in the Schedule of Fees (Exhibit B). All costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC, and must be allowable costs consistent with the cost principles in Title 2, *Code of Federal Regulations (2 CFR)*, part 200. The SFA will pay invoices submitted by the FSMC within (*Enter number of calendar or business days*) days of the invoice date. The SFA will pay invoices received by its accounting department by the (*Enter payment schedule*), if the invoices pass the SFA's audit. The SFA will notify the FSMC of invoices that do not pass audit, which the SFA will not pay until the invoices have passed audit, with no penalty accruing to the SFA.

Invoices shall be clear and accurate. They shall show the performance period, the number of reimbursable meals served by type, the agreed-upon price, and the total due to the FSMC for reimbursable meals. It shall also list the total sales subject to the MEF, the equivalency factor, the equivalent number of meals, the agreed-upon price, and the total due to the FSMC. Fresh Fruit and Vegetable billing shall clearly identify the food and labor charges. Any additional charges allowed in the contract shall be specified.

### 3. Interest, Fines, Penalties, and Finance Charges

Interest, fines, penalties, and finance charges that may accrue under this contract are not allowable expenses to the nonprofit school food service (cafeteria fund). The SFA will not pay unallowable expenses from the SFA's cafeteria fund.

### 4. Spoiled or Unwholesome Food

The SFA shall make no payment to the FSMC for food that, in the SFA's determination, is spoiled or unwholesome at the time of delivery, does not meet detailed food component specifications as developed by the SFA for the meal pattern, or does not otherwise meet the requirements of this Contract (*7 CFR Section 210.16(c)(3)*).

The SFA shall make no payment to the FSMC for meals that, in the SFA's determination, are spoiled or unwholesome at the time of delivery, do not meet detailed food component specifications as developed by the SFA for the meal pattern, or do not otherwise meet the requirements of this Contract (*7 CFR Section 210.16(c)(3)*).

#### **D. Contract Cost Adjustment**

The renegotiation of price terms under this Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of both parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this Contract were based, then those price terms so affected may be renegotiated by both parties. Renegotiation of price terms under such conditions must be mutual and both parties must agree on any changes in price terms. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms, to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract. Substantive changes of the Contract will require the SFA to rebid the Contract. Determination of whether it is a substantive change and if a rebid is needed should be reviewed with the SFAs legal counsel and confirmed by the SFA with the SD DOE.

#### **E. Availability of Funds**

Every payment obligation of the SFA under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. The SFA may terminate this Contract at the end of the period for which funds are available if funds are not allocated and available for the continuance of this Contract. In the event the SFA exercises this provision, no liability shall accrue to the SFA and the SFA shall not be obligated or liable for any future payments or for any damages resulting from termination under this provision.

#### **F. Timeliness**

Time is of the essence in this Contract.

#### **G. Approval**

This Contract has no force or effect until it is signed by both parties and is approved by the SDDOE.

#### **H. Amendment**

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by both parties, and approved by the SDDOE. Any oral understanding or agreement not incorporated into the Contract in writing and approved by the SDDOE is not binding on either party.

#### **I. Substantive Changes to Contract**

Any change to this Contract that results in a material change or any proposed renewals of this Contract may, at the determination of the SDDOE, either void this Contract or require the SFA to rebid the Contract. Following are examples of substantive changes that could require the SFA to rebid the Contract:

- The addition of a program
- A major shift in responsibilities for FSMC/SFA staff
- A modification that changes the scope of the Contract or increases the price of the Contract by more than the applicable federal, state, or local small purchase threshold (7 *CFR* Section 3016.36(g)(2)(iv) and (v))

#### **J. Subcontract/Assignment**

No provision of this Contract shall be assigned or subcontracted without prior written approval of the SFA.

Subcontracting is not allowed for SFSP and CACFP (7 *CFR* 225.6(h)(2)(ii) and 7 *CFR* 226.21(e)).

#### **K. Written Commitments**

Any written commitment by the FSMC relative to the services herein shall be binding upon the FSMC. Failure of the FSMC to fulfill any such commitment shall render the FSMC liable for damages due to the SFA. Such written commitments include, but are not limited to:

- Any warranty or representation made by the FSMC in any publication, drawing, or specifications accompanying or referred to in the proposal pertaining to the responsiveness of the proposal
- Any written notifications, affirmations, or representations made by the FSMC in, or during the course of, negotiations that are incorporated into a formal amendment to the proposal.

## **L. Trade Secrets/Copyrights**

The FSMC and SFA shall designate any information they consider confidential or proprietary—including recipes, surveys and studies, management guidelines, operational manuals, and similar documents—that the SFA and FSMC regularly use in the operation of their businesses or that they develop independently during the course of this Contract. Information so designated and identified shall be treated as confidential by the FSMC and the SFA, and the FSMC and the SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences, unless disclosure is otherwise required under the law. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this Contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, the following for federal government purposes:

- The copyright in any work developed under a federal grant, subgrant, or contract under a grant or subgrant
- Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with federal grant support (7 *CFR* Section 3016.34)

## **M. Severability**

Should any provision(s) of this Contract be declared or found to be illegal, unenforceable, ineffective, and/or void, then each party shall be relieved of any obligations arising from such provision(s). The balance of this Contract, if capable of performance, shall remain and continue in full force and effect.

## **N. Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

## **O. Silence/Absence/Omission**

Any silence, absence, or omission from the Contract specifications concerning any point shall mean that only the best commercial practices are to prevail. Only those materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

## **P. Indemnification**

The FSMC shall indemnify and hold harmless the SFA, or any employee, director, agent, District and Board Member of the SFA, from and against all claims, damages, losses, and expenses (including attorney's fees and costs incurred to defend any litigation), and decrees or judgments whatsoever arising from any and all personal injuries, including death, or damages to or destruction of property resulting from the FSMC's acts or omissions, willful misconduct, negligence, or breach of the FSMC's obligations under this Contract by the FSMC, its agents, employees, or other persons under its supervision and direction.

The FSMC shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA's sole acts or omissions.

## **Q. Sanctions**

For the breach of the Contract and associated benefits:

If the FSMC causes the breach, the FSMC assumes liability for any and all damages, including excess cost to the SFA in procuring similar services, and is liable for administrative, contractual, and legal remedies, as applicable.

## **R. Force Majeure**

1. Neither party shall be liable to the other for delay in, or failure of, performance nor shall any such delay in, or failure of, performance constitute default if such delay or failure is caused by force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure may include, but is not restricted to, acts of God, the public enemy, acts of the state in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.
2. Force majeure does not include any of the following occurrences:
  - Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market
  - Late performance by a subcontractor, unless the delay arises out of a force majeure occurrence
  - Inability of either the FSMC or any of its subcontractors to acquire or maintain any required insurance, bonds, licenses, or permits

3. If either party is delayed at any time in the progress of work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable and no later than the following work day or the commencement thereof, and shall specify the causes of such delay. Such notice shall be delivered by hand or sent by postal mail with a certified return receipt requested and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time for completion shall be extended by contract amendment, as long as the amended period does not violate 7 *CFR* Section 210.16(d).
4. Any delay or failure in performance by either party caused by force majeure shall not constitute default, nor give rise to any claim for damages or loss of anticipated profits.

#### **S. Nondiscrimination**

Both the SFA and FSMC agree that no child who participates in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Summer Food Service Program (SFSP), Special Milk Program, Fresh Fruit and Vegetable Program, or Child and Adult Care Food Program (CACFP) will be discriminated against on the bases of race, color, national origin, age, disability, sex.

#### **T. Compliance with the Law**

The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies regarding purchasing, sanitation, health, and safety for the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, in the FSMC's compliance efforts.

The FSMC shall comply with 2 *CFR* part 200 as applicable, 7 *CFR* parts 210 (NSLP), 215 (SMP), 220 (SBP), 225 (SFSP), 226 (CACFP), 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools) as applicable, Fresh Fruit and Vegetable Program (currently does not have a set of regulations), 250 (Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction), 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) (whichever is applicable), USDA FNS Instructions and policy, federal laws and regulations, and South Dakota laws and regulations, where applicable.

(Note to FSMC: remove any of the above references that do not apply to this Contract.)

#### **U. Choice of Law**

This Contract shall be construed under the laws of the state of South Dakota, where applicable, without giving effect to the principles of conflict of laws. Any action or proceeding arising out of this Contract shall be heard in the appropriate courts in South Dakota.

#### **V. Advice of Counsel**

Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Contract.

### **III. Relationship of the Parties**

- A.** The FSMC's relationship with the SFA will be that of an independent contractor and not that of an employee of or supervisor for the SFA. The FSMC will not be eligible for any employee benefits, nor will the SFA make deductions from payments made to the FSMC for taxes—all of which will be the FSMC's responsibility. The FSMC agrees to indemnify and hold the SFA harmless from any liability for, or assessment of, any such taxes imposed on the SFA by relevant taxing authorities. The FSMC will have no authority to enter into contracts that bind the SFA or create obligations on the part of the SFA.
- B.** Where the SFA is a public school district, the FSMC, as an independent contractor, shall have no authority to supervise food service classified personnel operating the NSLP, SBP, or Afterschool Meal Supplements (AMS) under the NSLP. (Note: add other child nutrition programs the SFA operates)
- C.** All services to be performed by the FSMC will be as agreed between the FSMC and the SFA. The FSMC will be required to report to the SFA concerning the services performed under this Contract. The SFA shall determine the nature and frequency of these reports.
- D.** The SFA is the responsible authority, without recourse to USDA or SDDOE, for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature.

### **IV. Food Service Program**

#### **A. Food Service Management Company Responsibilities**

(Note to FSMC: SFA may add additional responsibilities as needed.)

1. The FSMC will provide the SFA with an electronic Point of Service (POS) meal/milk counting system. Such meal/milk counting system must eliminate any potential for the overt identification of free and reduced-price eligible students under 7 *CFR* Section 245.8. This POS system will be used for the duration of this Contract and the SFA will not take an ownership interest or option in the POS system provided. (Note to FSMC: this is an optional provision. If the SFA chooses to use it, there must be detail regarding the specifications, procurement process, or whether it will be a rental or purchase. If it will be a rental, specify what the rental fee is and whether it will be included in the fixed price. If the SFA will not need the FSMC to provide a POS system, delete this clause.)
2. The SFA participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. Buy American, a 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 *CFR* 210.21(d).

## **B. School Food Authority Responsibilities**

1. The SFA shall ensure that the food service operation is in conformance with any requirements of the SDDOE and will monitor the food service operation through periodic on-site visits (7 *CFR*, sections 210.16(a)(2) and 210.16(a)(3)).
2. The SFA shall retain control of the quality, extent, and general nature of the food service program and establish all program and nonprogram meal and *a la carte* prices (7 *CFR*, sections 210.9(b)(1) and 210.16(a)(4)) Established meal prices shall utilize guidance of the Paid Lunch Equity tool.
3. SFAs with more than one school/serving location shall perform no less than one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures, the SFA shall ensure that the school implements corrective action and, within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problem. Each on-site review shall ensure that the school's claim is based on the

counting system authorized by the SDDOE under 7 *CFR* Section 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free, reduced-price, and paid lunches respectively, served for each day of operation (7 *CFR* Section 210.8(a)(1)).

4. The SFA shall retain control of the nonprofit school service account and overall financial responsibility for the nonprofit food service operation; the quality, extent, and the general nature of its food service; and the prices children are charged for meals (7 *CFR* Section 210.16(a)(4)).
5. The SFA shall retain responsibility for approving meal pattern(s) for students with disabilities, when their disability restricts their diet, and for those students without disabilities who are unable to consume the regular lunch because of medical or other special dietary needs (7 *CFR* Section 210.10(m))
6. The SFA shall retain signature authority for the food services application, agreements, Free and Reduced-Price Policy Statement, monthly Claim for Reimbursement, reports, program renewal, the verification of applications, letters to households, and all correspondence to the SDDOE relating to the food service program (7 *CFR* Section 210.16(a)(5)).
7. The SFA shall retain signature authority and be responsible for all contractual agreements entered into in connection with the food service program (7 *CFR* Section 210.21).
8. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster.
9. The SFA shall be responsible for the development, distribution, and collection of the letter to households and Application for Free and Reduced-Price Meals and/or Free Milk. (7 *CFR* Section 245.6).
10. The SFA shall be responsible for obtaining the direct certification list at least annually.
11. The SFA shall be responsible for the determination of eligibility for free and reduced-price meals and shall disclose the eligibility status of individual students or confidential information provided on the application for free or reduced-price meals to the FSMC, to the extent that such information is necessary for the FSMC to fulfill its obligations under this Contract. The FSMC will not disclose the eligibility status of individual students or confidential information provided.

12. The SFA shall be responsible for conducting any hearings related to determinations regarding free and reduced-price meal eligibility (7 *CFR* Section 245.7).
13. The SFA shall be responsible for verifying applications for free and reduced-price meals as required by federal regulations (7 *CFR* sections 245.6 and 245.6a).
14. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist with menu planning (7 *CFR* Section 210.16(a)(8)).
15. The SFA shall maintain applicable health certification and ensure that all state and local regulations are being met (Note to SFA: if the FSMC prepares and/or serves meals, use “are being met by the FSMC preparing or serving meals.” Otherwise delete.) at an SFA facility (7 *CFR* §§ 210.16(a)(7)) and 210.16(c)2.

## **V. Additional Responsibilities of SFA and FSMC**

Throughout the procurement and contract phases in connection with services ultimately provided by the FSMC, both the SFA and FSMC maintain certain responsibilities as outlined in a number of sections within this documentation. In addition to any duties and responsibilities referenced in other sections, the FSMC will comply with the responsibilities set forth in Exhibit 1. In addition to any duties and responsibilities referenced in other sections within this documentation, the SFA will comply with the responsibilities set forth in Exhibit 2.

Responsibilities of both the SFA and the FSMC with respect to sanitation matters are set forth in Exhibit 4.

## **VI. U.S. Department of Agriculture Foods**

### **A. Food Service Management Company Responsibilities**

1. The FSMC shall fully use, to the maximum extent possible, USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA’s nonprofit school food program (7 *CFR* Section 210.16(a)(6)).
2. In accordance with 7 *CFR* Section 250.53, the FSMC shall comply with the following provisions relating to the use of USDA Foods, as applicable:

- a. The FSMC must credit the SFA for the value of all USDA Foods (including both entitlement and bonus foods) received for use in the SFA's meal service in the school year or fiscal year. The credit must include the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing on the USDA Food value of processed end products to the SFA (7 *CFR* Section 250.51(a))
- b. The FSMC shall account for the full value of USDA Foods (7 *CFR* Section 250.51) by:
  - i) Subtracting the value of all USDA Foods received for use in the SFA's food service from the SFA's monthly invoice, and
  - ii) Using the Average Price File for the school year that the USDA Foods are received by the SFA. This listing is available from the USDA Food Distribution Web page at <http://www.fns.usda.gov/fdd/processor-pricing-reports>
3. The FSMC will be responsible for any activities relating to USDA Foods in accordance with 7 *CFR* Section 250.50(d)(2), (3), and (4), and will ensure that such activities are performed in accordance with the applicable requirements in 7 *CFR* Part 250.
4. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods and shall credit the SFA the value of said donated foods, at the SFAs option, either monthly or through an end of school year reconciliation.
5. The FSMC must use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service (7 *CFR* Section 250.51(d)).
6. In accordance with 7 *CFR* Section 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin and of equal or better quality, in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products, which contain donated foods that may not be replaced with commercial substitutes. The SFA must ensure that such substitution has been made and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 *CFR* Section 250.54(c).

7. According to 7 *CFR* Section 250.53(a)(7), the FSMC shall ensure that the processing agreement's value will be used in crediting the SFA for the value of USDA Foods contained in end products.
8. The FSMC will provide assurance that it will not itself enter into the processing agreement with the processor required in subpart C of 7 *CFR* Part 250.
9. The FSMC will provide assurance that it will comply with the storage and inventory requirements for USDA Foods.
10. The distributing agency, subdistributing agency, the SDDOE, SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
11. The FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory compliance of USDA donated foods in accordance with 250.54(b). The FSMC must submit to the SFA monthly inventory reports showing all transactions for processed and non-processed donated foods.
12. Any extensions or renewals of the Contract, if applicable, are contingent upon the fulfillment of all Contract provisions relating to USDA Foods.
13. The FSMC and SFA agree to comply with federal regulations 7 *CFR* Part 250, Section 250.12(b)(3) which states that SFAs have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling, and distribution. Section 250.12(b)(4) states that SFA will take action to obtain restitution in connection with claims for improper distribution, use, or loss, or damage to donated foods. (7*CFR* 250.12(b)(3) and (b)(4))

## **B. School Food Authority Responsibilities**

1. The SFA shall retain title to all USDA Foods and ensure that all USDA Foods received by the SFA and made available to the FSMC accrue only for the benefit of the SFA's nonprofit school food service and are fully used therein to reduce the price of the meal (7 *CFR* Section 210.16(a)(6)).
2. The SFA shall accept and use, in as large quantities as may be efficiently used in its nonprofit food service program, such foods as may be offered as a donation by USDA (7 *CFR* Section 210.9(b)(15)).

3. The SFA will maintain records to document its compliance with requirements relating to USDA Foods and conduct reconciliation (at least annually and upon termination of the Contract) to ensure that the FSMC has credited the value of all USDA Foods in accordance with 7 *CFR* sections 250.54(a) and (c).
4. The SFA shall be legally responsible for any loss of federally donated food that may arise due to equipment malfunctions or loss of electrical power not within the control of the FSMC

### **C. Mutual Responsibilities**

1. The SFA and FSMC shall consult and agree on end products to be produced from USDA donated foods during the time of this contract. If agreement cannot be reached, the FSMC shall utilize the donated foods in the form that was furnished by USDA.
2. In accordance with 7 *CFR* Part 250.51(a) all donated foods received for use by the recipient agency (SFA) for a period specified as either the school year or fiscal year must be used in the recipient agency's (SFA's) food service. The recipient agencies in child nutrition programs and FSMCs must also comply with other requirements in this part relating to donated foods, as well as other Federal requirements in 7 *CFR* parts 210, 220, 225, or 226, as applicable

## **VII. Meal Responsibilities**

### **A. The FSMC shall:**

1. Serve meals on such days and at such times as requested by the SFA.
2. Offer free, reduced-price, and paid reimbursable meals to all eligible children through the SFA's food service program.
3. Provide meals through the SFA's food service program that meet the requirements as established in 7 *CFR* Part 210.

## **VIII. Grade and Quality Specifications** (Note to SFA: This is a sample of specifications. If the SFA wants to propose changes to these specifications, they may do so.)

### **A. Meats**

1. **Beef, Pork, Lamb, Veal** - Meats used must be USDA inspected and of commercial grade or above. Ground beef must be no more

than 20% fat. *(Note to SFA: the SFA can specify a leaner beef if the SFA so chooses.)*

2. **Poultry** – U.S. Grade “A”
3. **Fish** -- Grade "A" where grade exists.

#### **B. Grains/Breads**

1. Products to be made with whole-grain or enriched meal or flour.
2. Pasta: Made from enriched semolina durum wheat flour.
3. Cereals must be whole-grain rich, enriched, fortified
4. Products shall meet USDA standards for whole grains according to the most current regulations or policy at a minimum, as applicable to the Program for which the meals are prepared.

#### **C. Dairy -- Minimum Standards**

1. Skim (nonfat) unflavored and 1% or ½% (lowfat) unflavored milk. Skim (nonfat) flavored if approved by the SFA.
2. Fluid milk shall be pasteurized, contain vitamins A & D at levels specified by the FDA, and must be consistent with State and local standards.
3. Buttermilk -- 8 ¼ % milk solids.
4. Yogurt, Cheese, Ice Cream, etc., USDA Quality Approved
5. Allowable milk served as part of the meal shall follow the most current USDA regulations/policy as applicable for the Program for which the meals are prepared.

#### **D. Beverages Other Than Milk (when allowed by regulation and SFA)**

1. Coffee – Grade “1”, no soluble used.
2. Tea – Orange Pekoe or higher grade.
3. Milk substitutes for non-disability reasons, if utilized by the SFA, must be consistent with standards identified in 210.10.

#### **E. Eggs – Grade “A” fresh – No storage eggs will be used.**

#### **F. Canned or Frozen Fruits and Vegetables**

1. U.S. Grade A or Grade B, or Grade 1, as appropriate for the product and for its appearance and use. Items such as peaches, pears, and mixed fruit (fruit cocktail) are only available as Grade B.
2. Canned or frozen products used must be no more than six months old.
3. Canned or frozen fruits and vegetables must be U.S. Grade A or B, as appropriate for the product.
4. Canned fruit shall be in light syrup, water, or fruit juice.

## **G. Fresh Fruits and Vegetables**

1. Fruits and vegetables used must be U.S. No. 1 or better (or that product's equivalent) and be wholesome and unspoiled.

## **H. Miscellaneous Groceries –**

1. Highest grade obtainable. U.S. No. 1 or Grade "A" or equivalent.
2. Alternate Protein Products - Alternate protein products used must meet the requirements in Appendix A of 7 CFR Part 210.
3. Only 100 percent pasteurized full-strength juice may be used in a breakfast or lunch.
4. Condiments -- U.S. Grade "A".

## **IX. Food Service Management Company Employees**

- A.** The FSMC shall only place employees for work in the SFA that meet the minimum professional standards outlined in 7 CFR 210.30 which can be viewed at the following Web page:  
[http://www.fns.usda.gov/sites/default/files/cn/pofstandards\\_flyer.pdf](http://www.fns.usda.gov/sites/default/files/cn/pofstandards_flyer.pdf).

The SFA shall ensure that all employees the FSMC proposes for placement meet the minimum professional standards. The FSMC shall ensure their employees take the required annual training as outlined in the professional standards. The FSMC shall track the trainings completed by each employee and maintain documentation to validate that training was completed. The FSMC shall remove from the SFA premises any employee who fails to take the required training.

The FSMC shall provide the SFA with a list of employees and evidence that they meet the professional standards. The FSMC shall further comply with the responsibilities set forth in Exhibit 3.

## **X. Books and Records**

- A.** The SFA and the FSMC must provide all documents as necessary for an independent auditor to conduct the SFA's single audit. The FSMC shall maintain such records as the SFA will need to support its Claims for Reimbursement. Such records shall be made available to the SFA upon request and shall be retained in accordance with 7 CFR Section 210.16(c)(1).
- B.** The SFA and the FSMC shall, upon request, make all accounts and records pertaining to the nonprofit food service program available to the SDDOE and USDA FNS for audit or review at a reasonable time and place. Each party to this Contract shall retain such records for a period

of three (3) years after the date of the final Claim for Reimbursement for the fiscal year in which this Contract is terminated, unless any audit findings have not been resolved. If audit findings have not been resolved, then records shall be retained beyond the three-year period as long as required for resolution of issues raised by the audit (7 *CFR* Section 210.9(b)(17)).

- C. The FSMC shall not remove state or federally required records from the SFA premises upon contract termination.
- D. The SFA and the FSMC shall allow the SDDOE, USDA, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the FSMC that are directly pertinent to the Contract for the purpose of making any audit, examination, excerpts, and transcriptions (7 *CFR* Section 3016.36(i)(10)).

## **XI. Monitoring and Compliance**

- A. The FSMC shall monitor the food service operation of the SFA through periodic on-site visits in order to develop recommendations for improvement of the food service program.
- B. The FSMC warrants and certifies that in the performance of this Contract it will comply with all applicable statutes, rules, regulations, and orders of the United States and the state of South Dakota.
- C. The SFA shall establish internal controls that ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement in accordance with 7 *CFR* Section 210.8(a). At a minimum, these internal controls shall include all of the following:
  - An on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA (7 *CFR* Section 210.8(a)(1))
  - Comparisons of daily free, reduced-price, and paid meal counts against data that will assist with the identification of lunch counts in excess of the number of free, reduced-price, and paid meal served each day to children eligible for such meal
  - A system for following up on meal counts that suggest the likelihood of meal counting problems.
- D. The SFA shall review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in

operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter. (7 CFR Part 210.9(c)(7))

## **XII. Equipment, Facilities, Inventory, and Storage**

- A.** The SFA will make available to the FSMC, without any cost or charge, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B.** The respective responsibilities of both the SFA and the FSMC regarding the use of facilities and equipment are set forth in Exhibit 4.
- C.** The FSMC shall notify the SFA of any equipment belonging to the FSMC on the SFA's premises within 10 days of its placement on the SFA's premises.
- D.** The premises and equipment provided by the SFA for use in its nonprofit food service program shall be in good condition and maintained by the SFA to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health including, without limitation, Occupational Safety and Health Administration regulations. The SFA further agrees that any structural or nonstructural modifications or alterations to the workplace or the premises necessary to comply with any statute or governmental regulation shall be the responsibility of the SFA and shall be at the SFA's expense. This provision shall survive termination of this Contract.
- E.** The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- F.** Ownership of the beginning inventory of food and supplies shall remain with the SFA as shall be credited to the SFA's account as the inventory is used.
- G.** All USDA Foods shall remain with the SFA.
- H.** Ownership of all nonexpendable supplies and capital equipment shall remain with the SFA. However, the FSMC must take such measures as may be reasonably required by the SFA for protection against loss, pilferage, and/or destruction.

## **XIII. Sanitation**

Respective Responsibilities of both the SFA and the FSMC with respect to sanitation matters are set forth in Exhibit 5.

## XIV. Certifications

- A.** The FSMC warrants and certifies that in the performance of this Contract, it will comply with the rules and regulations of the SDDOE and the USDA, and any additions or amendments thereto, including but not limited to 2 *CFR* part 200; 7 *CFR* parts 210, 215, 220, 225, 245, 250, 3016, and/or 3019; and USDA FNS Instruction, guidance, and policy, as applicable. The FSMC agrees to indemnify the SFA and the SDDOE against any loss, cost, damage, or liability by reason of the FSMC's violation of this provision.
- B.** The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments; Section 504 of the Rehabilitation Act of 1973; and any additions or amendments to any of these regulations.
- C.** The SFA and FSMC shall comply with all applicable standards, orders, or regulations issued, including:
- Section 306 of Clean Air Act (42 *U.S.C.* 1847(h)): <http://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap85-subchapIII-sec7602.pdf>
  - Section 508 of the Clean Water Act (33 *U.S.C.* 1368): <http://www.gpo.gov/fdsys/pkg/USCODE-2013-title33/pdf/USCODE-2013-title33-chap26.pdf>
  - Executive Order 11738: <http://www.epa.gov/isdc/eo11738.htm>
  - Environmental Protection Agency (EPA) regulations at Title 40, *Code of Federal Regulations*, Part 15, et seq. ([http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=9ed90ed6fc9c89c5c8465c743584c79a&tpl=/ecfrbrowse/Title40/40tab_02.tpl)). Environmental violations shall be reported to the USDA and the U.S. EPA Assistant Administrator for Enforcement, and the FSMC agrees not to use a facility listed on the EPA's List of Violating Facilities
- D.** Debarment Certification
- The USDA Certification Regarding Debarment must accompany each subsequent four (4) additional one-year renewals (7 *CFR* Section 3017.510). Contract renewals that do not include this certification will not be accepted for consideration.
- E.** Lobbying
- The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (Appendix A: 7 *CFR* Part 3018) must accompany each subsequent four

(4) additional one-year renewals (7 CFR Section 3017.510). Contract renewals that do not include this certification will not be accepted for consideration.

- F.** Energy Policy and Conservation Act:  
<http://legcounsel.house.gov/Comps/EPCA.pdf>.

The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

- G.** Contract Work Hours and Safety Standards Act Compliance:  
<http://www.dol.gov/compliance/laws/comp-cwhssa.htm>.

In performance of this Contract, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.

## **XV. Licenses and Taxes**

- A. The FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes, for FSMC employees; the FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees.
- B. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.

## **XVI. Insurance**

(Note to SFA: the SFA should include any and all other insurance requirements it deems appropriate.)

The SFA shall be named as additionally insured on General Liability, Automobile, and Excess Umbrella insurance policies.

The contract of insurance shall provide for notice to the SFA of any cancellation of or change in insurance policies 30 days before such cancellation or change is to take effect.

The FSMC and the SFA shall maintain, at a minimum, the following insurances:

(Note to FSMC: FSMC should consult with legal counsel in connection with the specific types of insurance and coverages, as well as whether the coverage amounts needed for each sub-category below need to be increased. The amounts shown below are the minimum amounts only.)

- A.** Workers' Compensation Insurance

Each party shall maintain Workers' Compensation Insurance coverage as required by state law, and Employers' Liability in the amount of one million dollars (\$1,000,000.00) for each accident covering all employees employed in connection with child nutrition program operations.

**B. Comprehensive or Commercial Insurance**

The FSMC shall maintain during the term of this Contract, for protection of the SFA and the FSMC, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than five million dollars (\$5,000,000.00) for each occurrence, including, but not limited to, Personal Injury Liability, Broad Form Property Damage Liability on the FSMC-owned property, Blanket Contractual Liability, and Products Liability, covering only the operations and activities of the FSMC under the Contract and, upon request, shall provide the SFA with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without 30 days prior written notice of cancellation to the SFA. With the exception of Workers' Compensation Insurance, the SFA shall be named as an additional insured under the FSMC's policies of insurance to the extent the SFA is indemnified pursuant to this Contract.

**C. Property Insurance**

The SFA shall maintain, or cause to be maintained, a system of coverage either through purchased insurance, self-insurance, or a combination thereof to keep the buildings, including the premises, and all property contained therein insured against loss or damage by fire, explosion, or other cause normally covered by standard broad form property insurance.

**D. Automobile Insurance**

The FSMC shall maintain its own automobile insurance policies for vehicles owned and operated by the FSMC in connection with carrying out the requirements in this Contract with a limit of not less than \$1,000,000.00 for each occurrence. Said insurance policies shall be comprehensive in nature and provide that the SFA be identified as an additional insured, if such vehicle(s) will be operated by the SFA in carrying out the requirements of this Contract.

The SFA shall maintain its own automobile insurance policies for vehicles owned and operated by the SFA in connection with carrying out the requirements in this Contract. Said insurance policies shall be comprehensive in nature and provide that the FSMC be identified as an

additional insured, if such vehicle will be operated by the FSMC in carrying out the requirements of this Contract.

## **XVII. Miscellaneous Provisions**

- A. The SFA, in the event that the FSMC is not able to perform under this contract due to events beyond the reasonable control of FSMC; i.e., strike, labor or material shortage, fire, flood, or other casualty or Acts of God, may, at their option, terminate this contract and assume control of the facilities, equipment, food supplies, expendables, etc., necessary for the continued operation of the SFA's food service operation.
- B. For all contracts in excess of \$150,000, both SFA and FSMC agree to comply with all applicable standards, orders, or requirements issued under section the Clean Air Act (42 U.S.C. 7401-7671q), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The SFA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat 871).
- C. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, or do not meet detailed specifications as developed by the SFA for each food component as specified in 7 CFR, Part 210.10, or do not otherwise meet the requirements of the contract. (7CFR 210.16(c)(3))
- D. Refer to Grade and Quality Specifications sheet containing purchased food specifications; such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery times, as outlined by SFA and agreed to by FSMC in procuring food components. (7CFR 210.6(c)(3))
- E. The FSMC shall maintain such records as the SFA will need to support its claim for reimbursement under this part, and shall, at minimum, report claim information to the SFA promptly at the end of each month. Such records shall be made available to the SFA upon request, and shall be retained in accordance with 210.23(c). (7 CFR 210.16(c)(1))
- F. Certification of compliance exists with the following Acts and regulations as appropriate for this contract:
  - 1. Energy Policy and Conservation Act (2 CFR 200)
  - 2. For any contract involving research, developmental (such as software), experimental or demonstration work: The requirements established in USDA regulations concerning USDA rights to copyrights, patent rights,

and rights in data and reporting of discoveries and invention. (2 CFR 200);

3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” For all contracts in excess of \$10,000:Executive Order 11246, entitled “Equal Employment Opportunity”, as amended by Executive Order 11375 and Department of Labor Regulations. (2 CFR 200);
  
4. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

G. For all contracts of \$100,000 or more:

1. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
2. For all contracts in excess of \$150,000, both SFA and FSMC agree to comply with all applicable standards, orders, or requirements issued under section the Clean Air Act (42 U.S.C. 7401-7671q), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The SFA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat 871).
3. Certification Regarding Lobbying, pursuant to 31 USC 1352,
4. Disclosure of Lobbying Activities, pursuant to 31 USC 1352,
5. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (Appendix II to 2 CFR Part 200 (for contracts worth \$100,000 or more)?
6. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 require the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- H. The SFA may terminate this contract for breach/neglect as determined by SFA when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to SFA. The SFA is the responsible authority without recourse to FNS or the SDDOE for the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but

is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction. (7 CFR 210.16(b)(2), 210.21(b))

- I. During the term of the contract, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of the FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by the FSMC), and similar compilations regularly used in FSMC business operations (trade secrets). The SFA shall not disclose any of the FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the contract. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the contract. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by the SFA, the SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the FSMC and not the SFA. The SFA shall have access to all such information from the FSMC for three years after grantees or sub-grantees make final payments unless there are unresolved audits, in which case all information must be retained and be accessible until the audits are resolved.
- J. Furthermore, the SFA's access or use of such software shall not create any right, title interest, or copyright in such software and the SFA shall not retain such software beyond the termination of the agreement. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. The SFA's obligations under this section are subject to its obligations under the South Dakota Open Records Act. This provision shall survive termination of the agreement.
- K. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which the SA and USDA shall have unrestricted rights.
- L. The FSMC certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- M. No child shall be discriminated against on the basis of race, color, national origin, age, sex, or disability. Both parties also mutually agree that no child's

eligibility category shall be overtly identified through actions of the SFA or the FSMC or any of their staff.

- N. SFA and FSMC mutually agree that any silence, absence, or omission from the contract specifications concerning any point must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA is to be used.
- O. SFA and FSMC must mutually certify that prices in the offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition.

### **XVIII. Termination**

Either party may terminate this Contract at any time upon 60-days' written notice (7 *CFR* Section 210.16(d)).

Either party may cancel for cause with a 60-day notification if either party breaches a provision of this Contract ("cause"). The nonbreaching party shall give the other party notice of such cause. If the cause is not remedied within 10 days, the nonbreaching party shall give a 60-day notice to the breaching party of their intent to terminate this Contract upon expiration of the 60-day period. This Contract may be terminated, in whole or in part, for convenience by the SFA with the consent of the FSMC, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated (7 *CFR* Section 3016.36(i)(2)). The Contract may also be terminated, in whole or in part, by the FSMC upon written notification to the SFA, setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of a partial termination, if the SFA determines that the remaining portion of the Contract will not accomplish the purposes for which the Contract was made, the SFA may terminate the Contract in its entirety under either 7 *CFR*, Section 3016.43, or 7 *CFR*, Section 3016.44(a), pursuant to 7 *CFR* Section 3016.44. The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

(PURPOSELY LEFT BLANK)

The FSMC that is awarded the contract shall sign this contract page as well as the SFA. The FSMC and SFA certify that they shall operate in accordance with all applicable State and Federal regulations. Both parties certify that all terms and conditions within the contract shall be considered binding. Any misstatements by the FSMC in the document shall be treated as fraudulent. The undersigned acknowledges that the representations made in this document are material and important and will be relied upon.

The contract includes the School Food Authority's request for Proposal, the Food Service Management Company's response on this document and any accompanying information, negotiations which must be documented in writing, and this final negotiated contract.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

For the Local Education Agency

For the Food Service Management Company

\_\_\_\_\_  
Printed or Typed Name of SFA

\_\_\_\_\_  
Printed or Typed Name of FSMC

\_\_\_\_\_  
Printed or Typed Name of Signer

\_\_\_\_\_  
Printed or Typed Name of Signer

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Printed or Typed Title

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Printed or Typed Title

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Signature

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Signature

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Printed or Typed Date

(PURPOSELY LEFT BLANK)

**ALL CONTRACTS MUST BE APPROVED BY**  
**THE SOUTH DAKOTA DEPARTMENT OF EDUCATION**

This contract is not valid until it is reviewed and approved by the SDDOE. The FSMC is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to date below, the State of South Dakota may not be obligated for payment.\*\*

---

Printed or Typed Name of Signer

---

Printed or Typed Title

---

Signature

---

Printed or Typed Date

\*\* As referenced in the Request for Proposal, the SFA has full responsibility for ensuring that the terms of the contract are fulfilled. SFAs must maintain oversight to ensure that any awarded contract is performed in accordance with the terms, conditions, and specifications of the contract and/or purchase orders. The SDDOE is never a party to any contract between a SFA and a food service management company (FSMC). In addition, the SDDOE and the SDDOE Child and Adult Nutrition Services (CANS) have no involvement with the enforcement of this contract; however, SDDOE may deny payment for all meals received/purchased under an invalid contract.

The SFA alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the SFA of any contractual responsibilities under its contracts. USDA will not substitute its judgment for that of the SFA unless the matter is primarily a Federal concern.

Exhibit A

Scope of Work

(Note: Modify as needed. The SFA is responsible for ensuring this Statement of Work accurately reflects the requirements of their food service program)

1. Overview of ( ) Food Service Program

A. The SFA currently operates or desires to add management of the following programs/services. If a program is added after the contract is in place (for example, breakfast program), the appropriate procurement procedures will be followed. (Note to SFA: mark which programs you currently operate and are considering adding. It is acceptable to delete the rows that are not applicable)

Table with 2 columns: Program Name, Currently Operates, Considering Addition. Rows include National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Fresh Fruit & Vegetable Program, Summer Food Service Program, Child & Adult Care Food Program, Child Care Center, Afterschool Supper, A la Carte, Adult Meals, Catering, Concessions, Contracted Meals, Vending, and Other (Specify).

B. The contract charge for meal service is based on an estimated minimum number of \_\_\_\_\_ full serving days. The school typically operates \_\_\_\_\_ days per week. The school  is or  is not considering a switch to a four-day school week.

C. Scale. (Describe facility(ies), and where, when, and how the food service is provided.) The SFA employs (\_\_\_\_) persons who provide food service to approximately (\_\_\_\_) children in (\_\_\_\_) grades at (\_\_\_\_) sites, including (\_\_\_\_) schools and (\_\_\_\_) feeding sites. (SFA: edit as needed, add other facilities or sites as applicable). The food service prepares approximately (\_\_\_\_) meals annually.

D. Financial Goals.

(Describe any financial goals the SFA expects the FSMC to meet with regard to the food service. Note to SFA: The SFA should not insert an amount to be retained by the school. If the company does not meet that goal, the Company is out of compliance and may cause the contract to be rebid.)

E. Management Goals.

(Describe any management goals the SFA expects the FSMC to meet.)

F. Food Service Office and Staff. The food service office is located at (\_\_\_\_). The current number of food service staff is (\_\_\_\_). The SFA \_\_\_does \_\_\_does not expect the FSMC to give priority to hiring current SFA employees.

(Note to SFA: The SFA will need to insert in information regarding the release of SFA's employees or whether the SFA will continue to employ these individuals. Without such information, neither the FSMC nor the SFA has a solid basis to estimate their respective expenses.)

G. Anticipated Program.

(Provide specific information, as applicable, regarding reimbursable meals or snacks.) (Note to SFA: if the SFA operates other federal child nutrition programs, include them here.)

**Participation** (add rows as needed or attach as a separate page):

PROGRAM	GRADES	MAX ENROLLMENT*	AVERAGE DAILY PARTICIPATION
National School Lunch (NSLP)			
School Breakfast Program (SBP)			
NSLP Afterschool Care Meal Supplements (Snacks)			
Seamless Summer Option (SSO)			
Child and Adult Care Food Program for Centers (CACFP)			
CACFP Afterschool Supper			
Summer Food Service Program			

\*These numbers are based on full enrollment as of October 31 for the (\_\_\_\_\_) school year (except for SSO and SFSP). There is no guarantee these numbers will be met.

## 2. Description of FSMC Responsibilities

General: under the direction of the SFA's Food Service Director, the FSMC selected pursuant to this RFP will provide the following. (*Enter general description of goals and objectives that the FSMC is expected to meet.*) In addition, the FSMC will employ (a) qualified professional(s) to (*describe general duties and title of person(s)*).

Responsibilities of the FSMC shall include: (*Shown as examples only by categories; the SFA should combine, modify, delete, and/or expand as needed.*)

### A. Purchasing of Supplies for the Food Service Program

Recommend (or be responsible for) purchasing standards and specifications as outlined in section VIII that will result in the best quality of products and services at the lowest price for the food service program.

All transactions shall be conducted in a manner so as to provide maximum open and free competition as provided by statute and regulation.

The grade, purchase unit, style, weight, ingredients, formulation, etc., shall be in compliance with applicable statutes and regulations.

Purchase food and/or supplies (if applicable); if authorized by the SFA, the FSMC shall purchase food used by the food service operation and the purchasing of food shall not displace SFA staff or delegate responsibilities of the SFA to the FSMC.

Recommend new or improved procedures for the requisition, receipt, and verification of all supplies used by the food service operation

### B. Facility or Site Operations

The FSMC shall recommend:

- Safety programs for employees
- Sanitation standards for housekeeping, preparation, storage, and equipment
- Adjustments to practices and operation of equipment as required
- A Food Safety Plan and participate in the development, implementation, and maintenance of said plan
- Methods to increase participation at all levels of the SFA's food service programs, improve food quality, and upgrade equipment and facilities

- Hours and number of positions at each site to meet food service operational needs

### **C. Menus**

Adhere to the 21-day cycle menu for the first 21 days of meal service; thereafter, the FSMC may only make changes with the SFA's approval (7 *CFR* 210.16(b)(1)).

Provide recommendations for menu development that will result in the best quality of products and services at the lowest price for the food service program.

Seek student and parent input on successful menu variation and planning.

Provide, upon request by the SFA, copies of recommended menus and supporting documentation to assure compliance with all applicable statutes and regulations, including performance based reimbursement; include menu recommendations to meet the needs of students with special dietary needs or disabilities

### **D. Quality Control**

Recommend or establish a formal structure to routinely and continuously gather input from students, staff, and parents about food services.

Recommend or establish a structure or process to routinely and continuously gather input from food service employees to ensure the most effective and efficient operation possible.

Participate in the Advisory Council as requested by the SFA.

### **E. Staff**

Recommend management staff and structure that will enhance the SFA's food service programs and ensure that the SFA's food service programs are of consistent top quality and held in positive regard by students, staff, and the public.

Recommend or establish and conduct management and staff training programs that will ensure staff development, proper supervision, professional/health certification, and consistent quality control both in production and service

### **F. Records**

Maintain full and complete financial and inventory records sufficient to meet federal and state requirements and that are in accordance with generally accepted accounting procedures.

Maintain employment records that show FSMC staff have all professional and health certifications as required by federal or state law and the SFA

### **G. Education**

Recommend actions or events to promote the nutrition education aspects of the food service program, and recommend or cooperate with efforts to merge these actions or events with classroom instruction; the FSMC will work in partnership with the SFA to educate students, parents, teachers, and the community about efforts to promote better nutrition and health.

Coordinate meeting times with the Food Service Director, other SFA staff, and parents or students to discuss ideas to improve the food service program; arrange meetings between an acceptable management representative of the FSMC and the Food Service Director, other SFA staff, and/or the school board, upon request

### **H. Reports**

Collect and provide, in the required format, information necessary for school food service claims for reimbursement from state and federal agencies and maintain records of past information; at the end of each month the number of meals to be claimed will be submitted to the SFA contact by the FSMC consultant/representative on or before the (\_\_\_)th of each month (7 *CFR* 210.16(c)(1)).

Provide the SFA with monthly operating statements and other information determined by the SFA regarding the food service programs

### **I. Point of Service**

Provide and/or implement an accurate point of service meal/milk count; such meal/milk counting system must eliminate the potential for the overt identification of free and reduced-price eligible students under 7 *CFR* Section 245.8

## **3. Specific FSMC Tasks**

**(Enter a specific description of the tasks the FSMC must complete to meet the requirements, goals, and objectives of your food service program.)**

(TASK 1)

(Delivery date, if applicable)

(TASK 2)

(Delivery date, if applicable)

(TASK 3)

(Delivery date, if applicable)

(TASK 4)

(Delivery date, if applicable)

(TASK 5)

(Delivery date, if applicable)

**Exhibit B**

**Schedule of Fees**

The costs included in the Cost per Meal table comprise the fixed price per meal. The fees are agreed upon by both parties and represent allowable food service costs in accordance with 2 *CFR* part 200 and respective Program regulations. The units are the estimated number of meals per year, not a guarantee.

**All costs are based on the average daily participation of ( ) students in the district and ( ) number of school days.**

**Cost Per Meal**

Note: Prices must **not** include values for USDA Foods, and must include all meal programs.

<b>LINE ITEM</b>	<b>UNITS*</b>	<b>RATE</b>	<b>TOTAL</b>
School Breakfast		\$	\$
School Lunch		\$	\$
Afterschool Snacks		\$	\$
Seamless Summer Option (specify meals)		\$	\$
Child and Adult Care Food Program for centers (specify meals)		\$	\$
Child and Adult Care Food Program Supper		\$	\$
Nonreimbursable Meals		\$	\$
<b>TOTAL</b>		\$	\$

\*Units to be provided by SFA